

FEBRUARY 8, 1990

SALE AND CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 1990, among the CITY OF BOSTON (the "City"), acting by and through the Boston Redevelopment Authority (acting pursuant to powers delegated to the Authority by the Public Facilities Commission of the City of Boston and the Real Property Board of the City of Boston), the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "Authority"), and KINGSTON BEDFORD JOINT VENTURE, a general partnership organized under the laws of the Commonwealth of Massachusetts ("KBJV"), c/o Metropolitan/Columbia Plaza Venture, 125 Summer Street, Boston, Massachusetts.

The parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 101: Defined Terms.

For the purpose of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

a. "Architect" shall mean the firm of Jung/Brannen Associates, Inc. or such other firm as shall be substituted by the Developer with the prior written consent of the Authority, which consent shall not be unreasonably withheld.

b. "Authority" shall mean the Boston Redevelopment Authority.

c. "Certificate of Completion" shall mean the instrument or certification so entitled to be issued by the Authority pursuant to Section 304 of this Agreement.

d. "Change Order" shall mean any request by the Developer for approval by the Authority, together (where appropriate in the context of this Agreement) with such approval, of a change to or modification or amendment of the Drawings and Specifications or of the completed Improvements, if the same would exceed \$100,000 in value or if the same would or might change the external appearance of the Improvements or any elements thereof which are open to public view including, without limitation, elements such as public lobbies, arcades, open spaces, pedestrian walkways and courtyards, or landscaping.

e. "City" shall mean the City of Boston, Massachusetts, acting by and through the Boston Redevelopment Authority (acting pursuant to powers delegated to the Authority by the Public Facilities Commission of the City of Boston and the Real Property Board of the City of Boston).

f. "City Council Votes" shall mean those votes of the City Council of the City to approve the sale of the Property to the Developer and which votes shall be approved by the Mayor.

g. "City Land" shall mean the land and all improvements presently thereon situated in Boston, Massachusetts, as described in Exhibit A attached hereto and made a part hereof.

h. "Closing" shall mean the consummation of the sale and conveyance of the Property to the Developer on the Closing Date and the performance by the parties hereto of their respective obligations in connection therewith as contemplated by the terms of this Agreement.

i. "Closing Date" shall mean the date established in Section 205 of this Agreement as the date for the sale and conveyance of the Property to the Developer as the same may be extended in accordance with the terms of Article II of this Agreement.

j. "Condition Date" shall mean the date on which all of the Conditions have been satisfied. Notwithstanding any other provision of this Agreement, in the event the City or the Developer waive the satisfaction of any Condition as a condition to Closing or agree to extend the satisfaction of any Condition beyond the Closing such that the Closing Date occurs prior to the Condition Date, the Condition Date shall survive the Closing Date. In furtherance of the foregoing, the City and the Developer agree to waive the satisfaction of the Conditions described in subsections (vi), (viii), (ix), (xii), (xix) and (xx) of Section

101(k) hereof as conditions precedent to Closing only; it being agreed that the foregoing conditions precedent shall remain Conditions for all other purposes under this Agreement, including without limitation as conditions precedent to the Construction Commencement Date.

k. "Conditions" shall mean the following conditions precedent to the obligation of the City to sell and the Developer to purchase the Property (including in each case, as applicable, the expiration of all applicable appeal periods, it being understood and agreed by the parties that no Condition shall be deemed satisfied until the expiration of all applicable appeal periods without an appeal having been filed, or, if an appeal has been filed, the entry of a final judgment upholding the satisfaction of the Condition from which no further appeal may be taken):

(i) The Authority shall have designated the Project Site a Planned Development Area pursuant to Section 3-1A [and Section 40-8] of the Boston Zoning Code, as amended from time to time, (the "Code") and shall have approved the PDA/DIP Plan (as hereinafter defined), submitted by the Developer for the Project Site. The PDA/DIP Plan was approved by the Authority on June 29, 1989 and is attached hereto as Exhibit B.

(ii) The Authority shall have entered into the PDA Cooperation Agreement which is in a form acceptable to the

Authority and the Developer, and shall have submitted such for the Developer's execution. The PDA Cooperation Agreement conforming to the requirements hereof was executed by the Authority and the Developer on September 11, 1989, and is attached hereto as Exhibit C.

(iii) The Zoning Commission shall have designated the Project Site a Planned Development Area pursuant to Section 3-1A [and Section 40-8] of the Code and shall have approved the PDA/DIP Plan submitted by the Developer for the Project Site and the Mayor of the City shall have approved such rezoning and PDA/DIP Plan, or, in the event the Mayor fails to act within fifteen (15) days after receipt of the rezoning and PDA/DIP Plan, such rezoning and PDA/DIP Plan shall have been deemed to have been approved, all in accordance with Section 3 of Chapter 665 of the Acts of 1956. The Zoning Commission and the Mayor approved said rezoning and PDA/DIP Plan on September 11, 1989, and September 13, 1989, respectively.

(iv) The Authority shall have entered into a DIP Agreement (as hereinafter defined) which is in a form acceptable to the Authority and the Developer, and shall have submitted such for the Developer's execution. The DIP Agreement conforming to the requirements hereof was executed by the Authority and the Developer on August 23, 1989 and is attached hereto as Exhibit D.

(v) The Authority shall have made final designation of the Developer as redeveloper of the Property (the "Final Designation").

(vi) The City of Boston Transportation Department (the "BTD") and the Developer shall have entered into a Transportation Access Plan Agreement and any other agreement required by the BTD for the Project.

(vii) The Developer shall have obtained from the Boston Air Pollution Control Commission a parking freeze permit and an exemption from the parking freeze requirements to permit construction of the Project, all in accordance with the Procedures and Criteria for Issuance of Parking Freeze Permits adopted under Massachusetts General Laws, Chapter 111, Section 31C.

(viii) The Developer shall have furnished evidence satisfactory to the Authority that the Developer has the equity capital and commitments for mortgage financing adequate for the construction of the Improvements.

(ix) The Developer shall have executed for the Project a Boston Residents Construction Employment Plan (as hereinafter defined in Section 1202 of this Agreement), a Memorandum of Understanding setting forth an Equal Opportunity Plan and A First Source Agreement, all in forms acceptable to the Office of Jobs and Community Services of the City ("OJCS"), the Boston Employment Commission and the Developer.

(x) The Authority shall have issued a written Adequacy Determination which approves the Developer's Final Project Impact Report.

(xi) The Massachusetts Secretary of Environmental Affairs shall have issued a Certificate that the Final Environmental Impact Report for the Project, as required by the Secretary in accordance with his Certificate on Environmental Notification Form dated August 8, 1986 does adequately and properly comply with the Massachusetts Environmental Policy Act, M.G.L. Ch. 30, §62-62H inclusive ("MEPA"), and with the regulations implementing MEPA.

(xii) The Massachusetts Water Resources Authority or any successor thereto shall have issued a Sewer Connection Permit under M.G.L. Ch. 92, Appendix §1-1 et. seq., and regulations promulgated thereunder.

(xiii) If, and to the extent, applicable, the procedures set forth in M.G.L., Ch. 9, §26 and the regulations promulgated thereunder at 950 C.M.R. 71.00 et seq. with respect to the Massachusetts Historical Commission ("MHC") shall have been complied with so that the Developer may proceed with the Project without further review or approval by MHC.

(xiv) No building comprising a portion of the Property or Private Land shall have been designated a landmark by the Boston Landmarks Commission pursuant to Chapter 772 of the Acts of 1975.

(xv) If, and to the extent, applicable, the Boston Civic Design Commission ("Design Commission") shall have approved, or shall be deemed to have approved pursuant to Section 28 of the Code, the Developer's Schematic Design Submission for the Project. The Authority approved the Developer's Schematic Design Submission for the Project on June 29, 1989 and acknowledges that said Submission satisfied the Schematic Review Requirements under the Development Review Procedures. Said approved Submission is attached hereto as Exhibit E. The Authority forwarded the Developer's approved Schematic Design Submission to the Design Commission for its review on August 7, 1989.

(xvi) The Developer shall have acquired title to the Private Land, provided however, the acquisition of the Private Land shall be a Condition of this Agreement to the extent that the inability of the Developer to acquire the Private Land is as a result of the failure, refusal or inability for any reason (whether voluntary or involuntary) of the owners of the Private Land to convey the Private Land pursuant to the Terms of that certain purchase and sale agreement dated as of _____, 1990 by and between Joseph N. Rasha, Jr. and Bradford Auto Parks #3, as sellers, and Developer, as buyer (the "Private Land Purchase Agreement") but shall not be a Condition of this Agreement to the extent that the inability of the Developer to acquire the Private Land is as a result of a voluntary failure by the Developer to

perform the obligations of the Developer under the Private Land Purchase Agreement.

(xvii) The Developer shall have acquired title to the Discontinued Parcels simultaneously with the acquisition of the City Land.

(xviii) The Public Improvement Commission of the City shall have approved discontinuance orders which orders shall have been timely approved by the Mayor for the discontinuance of (i) the subsurface area of a northern portion of Columbia Street, (ii) the entire southern portion of Columbia Street; (iii) the subsurface area of a portion of Bedford Street; and (iv) the portion within and above the existing sidewalk of the John F. Fitzgerald Expressway Surface Road all as shown on discontinuance plans entitled "Columbia Street - Discontinuance Plan", prepared by Survey Engineers of Boston dated December 15, 1989, "Bedford Street - Discontinuance Plan", prepared by Survey Engineers of Boston dated December 15, 1989, and "John F. Fitzgerald Expressway Surface Road - Discontinuance Plan", prepared by Survey Engineers of Boston dated December 15, 1989 and attached hereto as Exhibit F.

(xix) If, and to the extent, applicable, the Developer shall have obtained from the Boston Committee on Licenses, a division of the Public Safety Commission, permits to erect and maintain a parking garage for the Project.

(xx) The Developer shall have obtained any and all other applicable federal, state, or local permits, approvals, licenses, certifications, designations, agreements, variances or exceptions necessary to construct and occupy the Project.

(xxi) There shall be no lawsuit or other legal action pending in a trial court or an appellate court or threatened against the Developer, the Authority, the City or any other governmental authority which, if adversely decided, could have a material adverse effect upon the ability of the Developer to construct and occupy the Project.

1. "Construction Commencement Date" shall mean no later than six (6) months after the later of the Closing Date or the Condition Date. If and to the extent that, from time to time, Developer demonstrates that it is unable or imprudent, for reasons beyond its control (which may include, without limitation, strikes or unforeseen construction delays, unfavorable financing or construction markets, litigation or inability to obtain governmental approvals, permits, licenses, variances, exceptions and the like) to begin construction on or before the Construction Commencement Date, or, if and to the extent the Condition Date shall not have occurred on or prior to the Closing Date, the Authority shall, from time to time, extend the Construction Commencement Date for a period which is reasonable under the

circumstances but, in any event, not to exceed thirty-four (34) months in the aggregate, unless the Authority reasonably determines the Developer would, at such extended date, lack the capacity to commence the construction in question or to prosecute such construction to completion.

m. "Contractor" shall mean such general contractor or construction manager as may be selected by the Developer with the prior written consent, which shall not be unreasonably withheld, of the Authority upon submission to the Authority of reasonable evidence that such general contractor or construction manager is capable of undertaking the work. The Authority shall be deemed to have approved such general contractor or construction manager, if the Authority does not notify the Developer of its objection to such general contractor or construction manager within thirty (30) days after Developer's submission of such reasonable evidence. The Developer shall not be required to submit any proposed or executed contract with any such general contractor or construction manager to the Authority.

n. "Covenant Expiration Date" shall mean the date, which is the twentieth anniversary of the date of the Certificate of Completion for the Project.

o. "Deed" shall mean the instrument to be recorded in the Suffolk County Registry of Deeds in Boston, Massachusetts, whereby the City conveys the Property to the Developer.

p. "Design Documentation" shall mean the several stages of documentation which are set forth in the Development Review Procedures and which are to be prepared for the Developer by or through the Architect and which are to be submitted to the Authority for approval pursuant to the Development Review Procedures.

q. "Designation Conditions" shall mean the terms and conditions set forth in the document dated March 10, 1988, entitled "Resolution of the Boston Redevelopment Authority Regarding The Tentative Designation of a Development Team for the Parcel to Parcel Linkage Program, Project 1, Kingston - Bedford/Parcel 18" which is made a part hereof and attached hereto as Exhibit G and as said terms and conditions may be elaborated and clarified herein, in the PDA Cooperation Agreement, in the Development Review Procedures, or in the Final Designation of Developer by the Authority and the City or as such terms and conditions may be modified and revised from time to time by the agreement of the parties hereto.

r. "Developer" shall mean Kingston Bedford Joint Venture, a general partnership organized under the laws of the Commonwealth of Massachusetts ("KBJV") with Metropolitan Structures ("Metropolitan"), Columbia Plaza Associates ("Columbia") and Metropolitan/Columbia Plaza Venture ("Metropolitan/Columbia") as

general partners and having a place of business c/o Metropolitan Columbia Plaza Venture, 125 Summer Street, Boston, Massachusetts, and shall include any successor in interest or assign, whether by act of a party pursuant to this Agreement or by operation of law or otherwise.

s. "Development Review Procedures" shall mean the procedures set forth in Exhibit H attached hereto and made a part hereof, to be followed by the Developer in obtaining all approvals required hereunder of the Design Documentation.

t. "DIP Agreement" shall mean the Development Impact Project Agreement between the Developer and the Authority dated August 23, 1989, which is referred to in Section 101k(iv) of this Agreement, as the same may be amended from time to time, which sets forth the Developer's responsibility with respect to the Project Site for a Development Impact Project Contribution pursuant to Section 26A-3 of the Code, and for a Jobs Contribution Grant pursuant to Section 26B-3 of the Code.

u. "Discontinued Parcels" shall mean the parcels of land discontinued by the Public Improvement Commission of the City in accordance with Section 101(k)(xviii) of this Agreement and as shown on plans attached hereto as Exhibit F.

v. "Drawings and Specifications" shall mean the architectural and engineering drawings and specifications to be

included in the Contract Documents of the Development Review Procedures.

w. "Event of Default" shall mean the happening of one or more of the matters described as such in Section 901 of this Agreement.

x. "Hazardous Wastes" shall mean "oil", "chemical substance or mixture", "hazardous wastes", "toxic substances", hazardous substances" and "hazardous materials" as defined in the Comprehensive Environmental Response and Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et. seq. ("CERCLA"); the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq. ("RCRA"); Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499 (signed into law October 17, 1986) ("SARA"); Toxic Substance Control Act ("TSCA"); Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E; Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et. seq.; or any other state, federal, superlien or environmental clean-up or disclosure statutes now or hereinafter enacted and all regulations promulgated under any of the foregoing statutes (the "Hazardous Waste Regulations").

y. "Improvements" shall mean all structures and amenities to be constructed by the Developer pursuant to the approved Design

Documentation and any Change Orders and the PDA/DIP Plan, as the same may be amended.

z. "Instruments" shall mean all of the instruments attached hereto as Exhibits, as they may be amended from time to time.

aa. "Outside Condition Date" shall mean as defined in Section 204 hereof.

bb. "PDA Cooperation Agreement" shall mean the agreement which is referred to in Section 101(k)(ii) of this Agreement between the Developer and the Authority dated September 11, 1989, which sets forth certain agreements between the Developer and the Authority, as the same may be amended from time to time.

cc. "PDA/DIP Plan" shall mean the Plan which is referred to in Section 101(k)(i) and Section 101(k)(iii) of this Agreement and is attached hereto as Exhibit B, as the same may be amended from time to time and which amendments must be submitted to and approved by the Authority and the Zoning Commission and Mayor prior to undertaking any work in a Planned Development Area pursuant to Section 3-1A.a. of the Code.

dd. "Permitted PDA Uses" shall mean the uses designated and permitted by the PDA/DIP Plan, as the same may be amended from time to time.

ee. "PFC Votes" shall mean votes of the City of Boston Public Facilities Commission.

ff. "Private Land" shall mean the land situated in Boston, Massachusetts, as described in Exhibit I attached hereto and made a part hereof.

gg. "Project" shall mean the development of the Improvements on the Project Site.

hh. "Project Site" shall mean the Property, the Discontinued Parcels, and the Private Land, as shown in the Site Plan attached hereto as Exhibit J and made a part hereof.

ii. "Property" shall mean the City Land and the Discontinued Parcels.

jj. "Real Property Board Votes" shall mean votes of the City of Boston Real Property Board.

kk. "Tentative Designation" shall mean the vote of the Authority taken at a meeting held on March 10, 1988 in which a tentative designation was made of Metropolitan/Columbia Plaza Venture, whose partners are the sole partners of the Developer, as the prospective purchaser and redeveloper of the Property, the same being set forth at length in a certificate of Kane Simonian, Secretary of the Authority, a copy of which is attached hereto as Exhibit K and made a part hereof.

ll. "Zoning Commission" shall mean the Zoning Commission of the City.

ARTICLE II

TRANSFER OF THE PROPERTY AND PAYMENT THEREFOR

201: Covenant of Sale.

Subject to all of the terms, covenants and conditions of this Agreement, the City agrees to sell and convey and the Developer covenants and agrees to purchase the Property.

Section 202: Condition of Property to be Conveyed.

From the date of this Agreement to the Closing Date, the City shall keep all portions of the Property in the same condition as of the date hereof (it being agreed that the City shall have no obligation to demolish any of the improvements located thereon) and shall not enter into any lease or other occupancy agreement or management agreement affecting the Property and shall keep the Property free of all licensees, tenants or occupants (other than day to day licensees of parking spaces) including, without limitation, any garage or parking lot operators heretofore operating the parking garage or parking lot on the Property. The City shall not mortgage, pledge or otherwise hypothecate or burden the Property and shall not, without the prior written approval of the Developer, grant any easements, encumber the Property or otherwise restrict the Property. On the Closing Date, the Property shall be free of all licensees, tenants or occupants including, without limitation, parking garage and parking lot operators.

Until conveyance to the Developer, the City shall have legal responsibility for the Property, including, without limitation, the responsibility to repair and maintain the same and the responsibility for any injury to persons or property thereon.

Section 203: Hazardous Waste License to Remove.

The City and the Developer acknowledge that Hazardous Wastes may be located on the Property. The Developer agrees that the removal of Hazardous Wastes from the Property shall not be a condition precedent to Closing under this Agreement. The City shall have no obligation under this Agreement to so remove or otherwise dispose of Hazardous Wastes located on the Property. The City and the Authority agree to cooperate with the Developer in any notice, filing, application, or other governmental proceeding required by any Hazardous Waste Regulations in connection with the removal (or other disposal) by the Developer of any Hazardous Wastes located on the Property.

During the period commencing on the earlier of (i) ninety (90) days prior to the Designated Closing Date (as defined in Section 205 hereof) or (ii) April 1, 1990 and ending on the earlier of (x) the Closing Date or (y) the completion of the Hazardous Waste Work (as hereinafter defined), the City hereby grants to the Developer, its agents, contractors and other persons reasonably determined by Developer necessary to remove or otherwise dispose of the Hazardous Wastes located on the Property,

a license (the "Hazardous Waste License") to enter upon and occupy the Property upon reasonable prior notice to the City for the purpose of removing or otherwise disposing of the Hazardous Wastes located on or within the Property and the improvements located thereon (the "Hazardous Waste Work"). In the exercise of the Hazardous Waste License, the Developer shall be permitted (a) to enter the improvements, including the parking garage structures, and to remove (or otherwise dispose) therefrom any Hazardous Wastes, (b) to excavate all portions of the Property (excluding only the land upon which the parking garage is located but, including, without limitation, all paved parking areas) and to remove (or otherwise dispose) therefrom any Hazardous Wastes located therein, (c) to assemble, locate and store materials, machinery and equipment to be used in connection with the Hazardous Waste Work on the Property, (d) to erect fences or other barriers on the Property deemed reasonably necessary by the Developer to protect and secure those portions of the Property which are subject to the Hazardous Waste Work and (e) to take such other actions as Developer deems reasonably necessary to undertake the Hazardous Waste Work in accordance with the Hazardous Waste Regulations.

Whenever any Hazardous Waste Work is performed by the Developer pursuant to the Hazardous Waste License, such Hazardous Waste Work (a) shall not impair the structural integrity of any

parking garage structure located on the Property, (b) shall be performed in a safe, diligent and workmanlike manner and in compliance with all applicable laws, ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction thereof and (c) shall be performed to the extent practicable in a manner so as to minimize disruption of the operation of the parking garage (it being understood and agreed that the exercise of the Hazardous Waste License may require portions of the parking garage to be temporarily closed and may require the complete termination of operation of the parking lots located on the Property). The City agrees to cause its employees, contractors or licensees to cooperate with the Developer in the performance of the Hazardous Waste Work. Upon receipt of notice from the Developer of Developer's intention to commence the Hazardous Waste Work under the Hazardous Waste License, if requested by the Developer, the City shall terminate any parking operator lease, license or other agreement affecting the parking lots so as to deliver Developer exclusive use of the parking lots, during the Hazardous Waste License period. In the exercise of the Hazardous Waste License, the developer shall have no obligation to restore the Property or the improvements thereon upon completion of any Hazardous Waste Work.

The Developer agrees to indemnify and hold the City harmless from and against all liabilities, claims or costs which may arise

from the performance of the Hazardous Waste Work by the Developer during the exercise of the Hazardous Waste License. However, the Developer shall have no obligation to indemnify or otherwise compensate the City for the loss of any parking fees or other revenues derived from the Property which may arise as a result of the exercise of the Hazardous Waste License.

Notwithstanding anything to the contrary in this Agreement, the provisions of this Section 203 shall not preclude any party from making and proving a claim for allocation of costs in any action brought by a governmental agency with respect to any Hazardous Wastes; it being acknowledged that no indemnities are being given by the City, the Authority or the Developer hereunder with respect to Hazardous Wastes.

Section 204: Purchase Price and Payment Therefor.

The agreed purchase price for the Property shall be \$15,000,000.00, subject to adjustment as herein provided, and shall be paid on the Closing Date by certified or bank check or by wire transfer in Boston funds payable to the order of the City.

Section 205: Time of Sale and Conveyance.

The sale and conveyance and delivery of possession of the Property to the Developer shall take place on the Closing Date, at the offices of the Public Facilities Department of the City, 26 Court Street, 6th Floor, Boston, MA, or at such other place as the parties may agree. The "Closing Date" shall be the later to

occur of (i) the date between February 1, 1990 and June 29, 1990 designated in writing by the Developer upon thirty (30) days' prior notice to the City or if the Developer shall not so designate a date, the date shall be June 29, 1990 (the "Designated Closing Date") or (ii) the Condition Date.

If the Developer elects to purchase the Property on or before the Condition Date, despite the nonsatisfaction of any Conditions precedent to its obligation to purchase which Conditions have not been satisfied as of the Closing, the City and the Authority shall cooperate with the Developer to the fullest extent possible to secure the satisfaction of any remaining Conditions in accordance with the Project as then contemplated and approved, but failure of such satisfaction to occur shall not relieve the Developer of its obligations hereunder, except that the Developer shall be relieved of its obligations hereunder to the extent that any such failure delays the construction of the Improvements as described in Section 301(a) hereof only until such approvals are obtained.

Notwithstanding anything to the contrary stated in this Agreement, if the Developer has not purchased the Property and if all the Conditions which are conditions precedent for the Closing of the Property (excluding only the Condition described in Section 101(k)(xxi)) have not been satisfied within one (1) year after the Designated Closing Date or if the Condition described in Section 101(k)(xxi) has not been satisfied within three (3) years

after the Designated Closing Date (in either case the "Outside Condition Date"), then if at least 30 days prior to the Outside Condition Date, the Developer shall have advised the Authority or the Authority shall have advised the Developer of which of the Conditions are outstanding, either party may, on or after the Outside Condition Date, elect, by written notice, that this Agreement shall terminate with respect to the Property whereupon this Agreement shall be null and void and the parties shall have no further recourse to each other hereunder.

Section 206: Title and Instrument of Conveyance.

The Property is to be conveyed by a good and sufficient Quitclaim Deed running to the Developer or to such grantee as the Developer may designate by notice to the City subject to the approval of the Authority, if such approval is required pursuant to the provisions of Article V hereof, which notice shall be given at least ten (10) days before the Deed is to be delivered as herein provided, and the Deed shall convey a good and clear record and marketable fee simple title thereto, free from encumbrances and encroachments from or on the Property except for the terms, covenants and conditions of this Agreement and all encumbrances, easements and restrictions set forth in Exhibit L.

The Deed shall include a recitation that there has been full compliance with the provisions of Massachusetts General Laws, Chapter 44, Section 63A.

At the option of any party hereto, this Agreement may be recorded at the Suffolk Registry of Deeds at any time after the execution hereof but, in any event, this Agreement shall be recorded with said Deeds immediately prior to the recording of the Deed.

Section 207: Federal Tax Stamps and Other Closing Costs.

Developer shall pay the costs of any Federal or State documentary tax stamps which shall be required, and the cost of recording the Deed, this Agreement, and all other instruments and plans to be recorded together with the Deed.

Section 208: Adjustments.

The City shall pay all operating costs of the Property allocable with respect to any period before delivery of the Deed from the City to the Developer. The Developer shall pay all operating costs of the Property allocable with respect to any period after delivery of the Deed from the City to the Developer. "Operating Costs" as used herein shall refer to real estate taxes, betterment assessments, water, sewer use, firepipe, insurance and any and all other charges and expenses related to the ownership and use of the Property. Simultaneously with the delivery of the Deed, the Developer shall pay to the City water and sewer charges and assessments allocable to the Property with respect to any period after the delivery of the Deed from the City to the Developer, together with a payment in lieu of taxes allocable to

the days ensuing in the fiscal year after the date of the Deed computed in accordance with Section 63A of Chapter 44 of the General Laws of Massachusetts.

Section 209: Default by City re: Conveyance.

In the event that the City shall be unable to give title or to make conveyance or to deliver possession of the Property as provided herein, the City shall use reasonable efforts (but without obligation to expend more than \$50,000 towards such efforts), to make conveyance or to deliver possession as herein agreed, as the case may be. The City shall give written notice to the Developer, as soon as the City reasonably determines that it cannot convey or deliver possession of the Property as herein agreed, but in no event later than sixty (60) days before the Closing Date, and thereupon the time for the performance by the City shall be extended for a period of sixty (60) days, or such longer period as the City and the Developer shall mutually agree; provided however, that the Developer shall have the election, either at the original or any extended time for performance, to accept such title and possession as the City can deliver to the Property and to pay therefor the purchase price and to deduct therefrom an amount equal to the sum required to remove all liens or encumbrances which secure the payment of money, in which case the City shall convey such title. In the event that at the expiration of the extended time the City shall be unable to make

conveyance or to deliver possession as herein provided and the Developer elects not to accept such title, then, all obligations of the parties hereto shall cease, and this Agreement shall be null and void and the parties shall have no further recourse to each other hereunder.

To enable the City to make conveyance as herein provided, the City may, on the Closing Date, use the purchase money or any portion thereof to clear the title of any and all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the Deed.

Section 210: Default by Developer prior to Delivery of Deed.

In the event that prior to delivery of the Deed the Developer shall default in its obligations hereunder and shall be unable to correct such default within 180 days after written notice thereof (or within such extended period of time as may be established by the City, acting solely in its discretion) or, where cure requires more than 180 days, if the Developer does not promptly begin such cure and thereafter diligently prosecute the same to completion, then the City may, at its election, by written notice to the Developer given on or prior to the Closing Date (as the same may be extended hereunder) terminate this Agreement and all rights of the Developer hereunder and retain all deposits as liquidated damages without further recourse to the parties hereunder.

Section 211: Mortgage to Secure Linkage Repayment.

[DISCUSS]

ARTICLE III

RESTRICTIONS AND CONTROL UPON DEVELOPMENT

Section 301: Restrictions on Use; Signage.

a. The Improvements to be constructed on the Project Site (including the Property) shall consist of approximately 952,000 square feet of office space and retail/commercial space and a parking facility located on five (5) levels below grade with approximately 920 parking spaces, all to be located on approximately 74,082 square feet of land for an overall Project FAR not to exceed 14, or shall otherwise be in conformity with a design approved in the Development Review Procedures. The Improvements shall not exceed a height of 465 feet as measured to the top of the parapet (except for certain decorative features and a mechanical penthouse on the higher tower structure).

b. No sign shall be erected on the Property without the approval of the Authority which approval shall be in accordance with the Boston Sign Code.

Section 302: Improvements and Submission of Plans.

a. The Development Review Procedures set forth the formal stages of submissions and approvals for the Design Documentation relating to the Improvements. All aspects of the Design

Documentation for the Project shall conform to the PDA/DIP Plan, as it may be amended and revised by the agreement of the parties thereto, and to the terms and conditions of this Agreement, as they may be amended by the agreement of the parties hereto. The several stages of review of the Design Documentation as defined in Exhibit H are the Schematic Design, the Design Development, the Contract Documents (including Drawings and Specifications) and the Construction Inspection. In the event that any provision of the Development Review Procedures shall be inconsistent with any provision of this Agreement, then this Agreement shall govern.

b. It is the general policy of the Authority that all new buildings shall be designed and constructed to accommodate persons who are physically handicapped. In furtherance of this policy, and without limiting Developer's obligation to comply with all legal requirements applicable thereto, the Design Documentation (including the Drawings and Specifications) for the Improvements shall include provisions conforming insofar as practicable with Article 30 of the Code (Barrier-Free Access) and the "American Standard Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped" as published by the National Society for Crippled Children and Adults, Inc., which specifications, as amended from time to time, are hereby incorporated herein by reference. The Authority shall take into consideration the provisions and objectives of such

specifications in its review of and action upon the Design Documentation (including Drawings and Specifications) for the Improvements.

c. The Authority hereby acknowledges its receipt of and its approval on June 29, 1989, of the Developer's Schematic Design Submission for the Improvements which is contained in a booklet entitled "Kingston/Bedford Development Plan Schematic Design Submission" dated December 23, 1988 and prepared by Yu Sing Jung, Jung/Brannen Associates, Inc., for Metropolitan/Columbia Plaza Venture, as supplemented by a booklet entitled "One Lincoln Street (Kingston/Bedford Development Plan) Revised Developer's Alternative" dated June 1, 1989 and prepared by Yu Sing Jung, Jung/Brannen Associates, Inc., for Metropolitan/Columbia Plaza Venture.

d. Developer shall submit to the Authority the Design Development for the Improvements as described in the Development Review Procedures. The Authority shall review said Design Development for conformity with the approved Schematic Design and this Agreement and for the acceptability of design details not included in prior approved submissions ("Design Details") and shall, within fifteen (15) days after receipt thereof and after meeting with the Developer, either approve said Design Development as conforming with the approved Schematic Design and this Agreement and providing acceptable Design Details or notify

Developer in writing of disapproval, specifying the respects in which the Design Development does not conform with the approved Schematic Design and this Agreement or in which the Design Details provided therein are unacceptable.

In the event of a disapproval, Developer shall, within a reasonable period after Developer receives the written notice of such disapproval, resubmit said Design Development altered so as to conform to the approved Schematic Design and this Agreement and to provide revised Design Details in those respects specified by the Authority as the grounds for disapproval. The resubmission shall be subject to the review and approval of the Authority in accordance with the procedure hereinabove provided for an original submission, until the Design Development and Design Details shall be approved by the Authority.

If Developer receives no notification from the Authority of such disapproval within fifteen (15) days after submission of the Design Development, including Design Details, or any correction thereof, as the case may be, such Design Development or corrected Design Development, including Design Details, shall be deemed approved.

e. Within two hundred seventy (270) days after the Authority has approved or has been deemed to approve the Design Development, the Developer shall submit to the Authority the Drawings and Specifications and other Contract Documents for the

Improvements as described in the Development Review Procedures. The Authority shall review said Drawings and Specifications and other Contract Documents for conformity with the approved Design Development for the Improvements and this Agreement and the acceptability of the Design Details provided for therein and shall, within fifteen (15) days after receipt thereof and after meeting with the Developer, either approve said Drawings and Specifications and other Contract Documents as conforming with the approved Design Development for the Improvements and this Agreement and providing acceptable Design Details or notify Developer in writing of disapproval, specifying the respects in which said Drawings and Specifications and other Contract Documents do not conform to the approved Design Development for the Improvements and this Agreement or in which the Design Details provided therein are unacceptable.

In the event of a disapproval, Developer shall, within a reasonable period after Developer receives the written notice of such disapproval, resubmit the Drawings and Specifications and other Contract Documents for the Improvements altered so as to conform to the approved Design Development for the Improvements and this Agreement and to provide revised Design Details in those respects specified by the Authority as the grounds for disapproval. The resubmission shall be subject to the review and approval of the Authority in accordance with the procedure

hereinabove provided for an original submission, until the Drawings and Specifications and other Contract Documents for the Improvements, including revised Design Details, shall be approved by the Authority.

If Developer receives no notification from the Authority of such disapproval within fifteen (15) days after submission of the Drawings and Specifications and other Contract Documents for the Improvements, including Design Details, or any correction thereof, as the case may be, such Drawings and Specifications and other Contract Documents for the Improvements, including Design Details, or corrected Drawings and Specifications and other corrected Contract Documents for the Improvements, including revised Design Details, shall be deemed approved.

f. As part of the Development Review Procedures, the Authority shall require the Developer to take all reasonable and economical measures consistent with the scope of the Project as presently conceived to mitigate damage to the environment identified in the environmental impact report to be prepared by the Developer for the Authority and the Secretary of Environmental Affairs in the environmental review process associated therewith.

g. The Development Review Procedures may incorporate and allow changes, from time to time, from the approved Schematic Design for the Improvements (and subsequent elaborations thereof) in order to preserve the essential rights and obligations of the

parties to the extent reasonably necessitated by changes of conditions applicable to the Project including, without limitation, changes in financing or construction markets or inability to obtain, or conditions imposed in connection with, any governmental approvals, permits, licenses, variances, exceptions or other legal requirements, and the like. Decisions made by the Authority after good faith reasonable attempts to preserve the essential rights and obligations of the parties shall be conclusive.

h. The Developer shall not apply for a foundation or building permit for the construction of the Improvements or any part thereof without the prior certification of the Authority that the work to be done as set forth in the permit application is in accordance with the Drawings and Specifications approved by the Authority in accordance with the requirements of this Agreement. In its construction of the Improvements, the Developer shall insure that there is no material deviation from such Drawings and Specifications in connection with the external appearance of the Improvements or any elements thereof which are open to public view, except and only to the extent that Change Orders have been requested in writing and have been approved in writing by the Authority.

It is agreed that all Change Orders issued and implemented subsequent to approval by the Authority of Drawings and

Specifications constitute a deviation from the approved Drawings and Specifications. The Developer agrees that no Change Order will be implemented unless such Change Order shall have been submitted to the Authority and shall thereafter have been approved or shall be deemed to have been approved by the Authority. The Authority shall approve or disapprove a Change Order (i) within seven (7) days of its submission to the Authority when such Change Order involves minor changes and (ii) within twenty (20) days when such Change Order involves major changes. For purposes of this Agreement a major change is any change having a cost of \$1,000,000 or greater. When the Authority disapproves a Change Order, its disapproval shall include a detailed written explanation therefor. If Developer receives no notification from the Authority of such disapproval within seven (7) days after submission as to a minor change or within twenty (20) days after submission as to a major change, such Change Order shall be deemed approved.

In the event the Developer shall fail to comply with the foregoing requirements in proceeding with construction or modification of all or any part of the Improvements, promptly after discovery thereof, the Authority shall notify the Developer and, if the Authority determines that such failure constitutes a substantial deviation from the foregoing requirements, the Authority may by written directive given to the Developer within a reasonable time after the discovery thereof, require the Developer

to modify or reconstruct such portion or portions of the Improvements as deviate from the approved Drawings and Specifications or any Change Order with respect thereto in order to bring them into conformance therewith. The Developer shall promptly comply with such a directive. In addition to any other remedies available to it under law or under this Agreement, the Authority may enforce the provisions of this Section 302 by an action in a court of appropriate jurisdiction to compel specific performance by the Developer.

Section 303: Time for Commencement and Completion of Improvements.

a. The Developer shall commence construction of the Project on or before the Construction Commencement Date. If and to the extent that, from time to time, the Developer demonstrates that it is unable or imprudent, for reasons beyond its control (which may include, without limitation, strikes or unforeseen construction delays, unfavorable financing or construction markets, litigation or inability to obtain governmental approvals, permits, licenses, variances, exceptions and the like), to commence construction of the Project on or before the Construction Commencement Date, or if and to the extent the Condition Date shall not have occurred on or prior to the Closing Date, the Authority shall, from time to time, extend the Construction Commencement Date for a period which is reasonable under the circumstances within the 34-month period set

forth in Section 101(1) hereof, unless the Authority reasonably determines that Developer would, at such extended date, lack the capacity to commence such construction.

b. The Developer shall diligently prosecute to completion the construction of the Improvements and (subject to unforeseen delays including, without limitation, delays for force majeure and subject to extensions as may be issued by the Authority in its reasonable discretion) shall substantially complete such construction, as provided in Section 304 hereof, within thirty-six (36) months after the Construction Commencement Date.

c. The Developer shall submit to the Authority for its approval a detailed estimated construction progress schedule for the Project prior to commencement of construction of the Project in a format generally used in the construction of buildings. This schedule shall be revised, from time to time, as construction proceeds, but not less frequently than semi-annually, and whenever a delay of more than sixty (60) days is anticipated, and such revisions shall promptly be submitted to the Authority. Any submission of a revised construction schedule shall be accompanied by a written report by the Developer citing any adjustments to the progress forecast, analyzing the causes thereof, and, where applicable, noting corrective efforts which shall be reasonably satisfactory to the Authority. Any such corrective efforts of the Developer shall be subject to inspection by representatives of the

Authority, and the Authority shall endeavor to notify the Developer promptly in writing of any major defects directly observed by it. Upon receipt of any such notification, the Developer shall promptly undertake and proceed diligently to cure any such defects to the reasonable satisfaction of the Authority.

If Developer receives no notification from the Authority of disapproval of said construction progress schedule or revised construction progress schedule, as the case may be, within seven (7) days after submission thereof, said construction progress schedule or revised construction progress schedule shall be deemed approved.

d. It is intended and agreed that the agreements and covenants contained in this Section 303 with respect to the commencement and completion of the Project shall be covenants running with the Project Site. This subsection shall not, however, apply against any mortgagee permitted by this Agreement unless the mortgagee shall elect to complete as permitted in Section 503 of this Agreement, in which case the extension provisions of that Section shall apply.

Section 304: When Improvements Completed.

a. The construction of the Project shall be deemed completed for the purposes of this Agreement when the Improvements are built substantially in accordance with the provisions of this Agreement, the PDA/DIP Plan, the PDA Cooperation Agreement, the

approved Drawings and Specifications and Contract Documents for the Improvements, and any approved Change Order with respect thereto, except for (i) items of work and adjustment of equipment and fixtures which can be completed after occupancy has occurred, e.g. so-called punchlist items, (ii) landscaping and other similar work which cannot then be completed because of climatic conditions and (iii) with respect to office, retail and other tenant space, items of work normally left for completion pursuant to the requirements of specific occupancy agreements including, without limitation, construction of interior partitions and doors, distribution of electrical outlets and switches, location of ventilation ducts and returns, and placement of lighting fixtures and the installation of ceilings.

b. If the Authority issues a Certificate of Completion prior to completion of the work described in clauses (i) and (ii) above and any and all other work required by approved plans and specifications which, in the reasonable opinion of the Authority, should be completed prior to the issuance of a Certificate of Completion, then as security for the completion of such work, the Developer shall deposit with the Authority, or, if required by any mortgagee, with the holder of the first mortgage pursuant to an escrow or holdback agreement approved by the Authority (such approval not to be unreasonably withheld or delayed), an amount which, in the reasonable opinion of the Authority, and, if

applicable, the mortgagee, is sufficient to cover the cost of such completion, such amount to be returned to Developer promptly upon the completion of such work (to the reasonable satisfaction of the Authority and holder of the mortgage) except to the extent such amount of the deposit is applied to the completion of such work as provided hereinafter. The Authority agrees that it will not unreasonably disagree with the decisions of any mortgagee on these issues. Said deposit, if deposited with the Authority or the first mortgagee, as the case may be, shall be in cash, certified check, bond, letter of credit, or by other similar security, the form of such security to be subject to the reasonable approval of the Authority and the mortgagee. The deposit shall be delivered simultaneously with the issuance of the Certificate of Completion. If such work is not so completed to the reasonable satisfaction of the Authority, within a reasonable time after the issuance of such Certificate of Completion, and in any event within one (1) year of such issuance (unforeseen delays notwithstanding), then the Authority shall promptly thereafter deliver such deposit to the holder of any such first mortgage, who shall apply such deposit to the completion of the outstanding work to the satisfaction of the Authority, it being understood that the mortgagee shall not be required to apply any of its own funds thereto. The Authority will act reasonably and in good faith where its rights hereunder correspond to similar rights of the mortgagee, but the Authority

may act independently of the mortgagee if in the Authority's reasonable judgment the rights of both cannot be accommodated. If the Authority issues a Certificate of Completion prior to completion of the work described in clause (iii) above, Developer agrees to complete such work within a reasonable time after the leasing of such tenant space.

c. Periodically, or as frequently as monthly, during construction of the Project, upon the reasonable prior written request of Developer or any mortgagee that it wishes a determination from the Authority as to the compliance of a particular aspect of construction of the Project with the provisions of this Agreement, the PDA/DIP Plan, the PDA Cooperation Agreement, the Development Review Procedures, the approved Drawings and Specifications and Contract Documents, and any approved Change Order with respect thereto, the Authority shall consult with the Developer, and any mortgagee who has requested such determination, and, to the extent that the Authority can reasonably make such determination and to the extent that the Developer or any such mortgagee provides information reasonably requested by the Authority in connection with such determination, the Authority shall make a determination with respect to the compliance of such aspect of construction with such provisions and deliver to the Developer and any such mortgagee a written statement setting forth its determination ("Statement of

Compliance"). To the extent that any information furnished to the Authority by Developer, as provided above, is accurate and complete, the Developer and any mortgagee shall be entitled to rely upon such statement and such statement shall be conclusive with respect to the matters discussed therein.

d. Promptly after substantial completion in accordance with Section 304(a) hereof and in accordance with the requirements of this Agreement, the Authority will furnish to the Developer and to any mortgagee a Certificate of Completion which so certifies substantial completion. Such certification by the Authority shall be conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligations of the Developer to construct the Project, except for aspects thereof to be completed thereafter, which aspects shall be detailed in a separate letter from the Authority to be supplied promptly thereafter. Promptly after completion of any aspects of construction to be completed after issuance of a Certificate of Completion therefor as detailed in said separate letter, the Authority will furnish to the Developer and to any mortgagee a letter which so certifies that said aspects of construction have been completed.

Developer agrees that the Authority shall be under no obligation to issue a Certificate of Completion until such time as the Authority has had a reasonable opportunity to inspect the

Improvements constructed pursuant to the provisions of this Agreement, the PDA/DIP Plan, the PDA Cooperation Agreement, the Development Review Procedures, the approved Drawings and Specifications and the other Contract Documents for the Improvements (as modified by any Change Order approved by the Authority). The Authority shall not be required to make an inspection hereunder unless the Developer or any mortgagee has requested the Authority, by written notice thereto, to issue a Certificate of Completion.

The Certificate of Completion provided for in this Section shall be in suitable form for recording in the Registry of Deeds for Suffolk County, Commonwealth of Massachusetts. If the Authority shall refuse or fail to provide such Certificate of Completion in accordance with the provisions of this Section, the Authority shall, within thirty (30) days after receipt of a written request by the Developer or any mortgagee, provide the Developer and any such mortgagee with a written statement, indicating in adequate detail in what respects the Developer has failed substantially to complete construction of the Project in accordance with the provisions of this Agreement, the PDA/DIP Plan, the PDA Cooperation Agreement, the Development Review Procedures, the approved Drawings and Specifications and the other Contract Documents for the Improvements (as modified by any Change Order approved by the Authority) or is otherwise in default and

what measures or acts will be necessary, in the reasonable opinion of the Authority, for the Developer to take or perform in order to obtain such Certificate of Completion. The Authority shall not withhold a Certificate of Completion for any aspect of construction which the Authority has determined in a Statement of Compliance to be in compliance with the provisions of this Agreement, the PDA/DIP Plan, the PDA Cooperation Agreement, the Development Review Procedures, the approved Drawings and Specifications and Contract Documents for the Improvements, and any approved Change Order thereto. If the Authority shall refuse or fail to provide such a written statement to the Developer or any such mortgagee within thirty (30) days of a request therefor, then the instrument certifying substantial completion shall be deemed to have been issued and the Developer and any such mortgagee shall be entitled to obtain specific performance ordering such instrument to issue.

Section 305: Prompt Payment of Obligations.

Without limiting the right of Developer, or its contractors or subcontractors, to withhold payment of any monies which Developer, or its contractors or subcontractors, is contesting or disputing in good faith, the Developer shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms and corporations doing any work, furnishing any materials or supplies or renting any equipment to the Developer or

any of its contractors or subcontractors in connection with the development, construction, furnishing, repair or reconstruction of any of the Improvements on the Project Site. Neither this provision nor any other provision of this Agreement shall be construed to create rights in anyone who is not a party to this Agreement.

ARTICLE IV

CHANGES AND ALTERATIONS

Section 401: Changes after Completion.

After the Improvements have been completed in accordance with this Agreement, the PDA/DIP Plan, the PDA Cooperation Agreement, the Development Review Procedures, the approved Drawings and Specifications and Contract Documents for the Improvements, and any approved Change Order thereto and prior to the Covenant Expiration Date, no person shall, without the prior written approval of the Authority, reconstruct, demolish, subtract therefrom, make any additions thereto or extensions thereof, or permanently change the materials, design, dimensions, or color thereof, if such reconstruction, demolition, subtraction, addition, extension or change would affect in any material way the external appearance of public lobbies, arcades, open spaces, pedestrian walkways and courtyards or landscaping, or the external appearance of any building (including roof and penthouse) or other

external Improvements except that any restoration of the Improvements after a casualty or eminent domain taking to the condition required to exist prior to such event shall not require approval of the Authority.

Section 402: Procedures for Changes.

a. In requesting such approval or confirmation of compliance with Section 401 hereof, there shall be submitted to the Authority for its approval such plans, specifications, and other materials for the proposed work as are required by the Development Review Procedures, all within such reasonable time limits as the Authority shall require therefor.

b. If the Authority shall consent to any alteration, addition, change or modification requiring its consent under Section 401 hereof, such alteration, addition, change or modification shall be accomplished in compliance with these requirements:

(i) No work shall be undertaken until there shall have been produced and paid for, or caused to be paid for, so far as the same may be required from time to time, all governmental permits and authorizations of the various governmental agencies having jurisdiction.

The Authority agrees to join in the application for such permits or authorizations, whenever such action is necessary, but at the Developer's sole cost and expense.

(ii) No work shall be undertaken until there shall have been presented evidence reasonably acceptable to the Authority of Developer's ability to pay for the cost thereof.

Section 403: Failure to Comply with Change Requirements.

If there shall be a failure to comply with the foregoing requirements of this Article IV, the Authority may, without limiting other remedies available to it, direct in writing that any work done without the prior written approval of the Authority be modified, reconstructed or removed. Such a directive shall promptly be complied with and no further work shall be done until such directive is satisfied. The Authority shall not exercise the remedy described in this Section if and to the extent that the Developer has proceeded in good faith in construction and reasonably demonstrates that it is more likely than not that the Authority would have approved the work in question had it been submitted for approval pursuant to Section 402 hereof.

ARTICLE V

TRANSFER AND MORTGAGE OF DEVELOPER'S INTEREST

Section 501: General Terms Relating to Transfer of Interest in Property by Developer.

a. After the delivery of the Deed and until the issuance of the Certificate of Completion, no legal or beneficial interest in the Project (which term shall be deemed to include successors in

interest of such interest) shall be transferred, or caused or suffered to be transferred, which would directly or indirectly change the legal or beneficial ownership interests in, or control of, the Developer from that existing on the Closing Date which ownership interests shall be set forth in the Disclosure Statement to be submitted by the Developer to the Authority at Closing pursuant to Article 31A of the Code), without the written approval of the Authority, which shall not be unreasonably withheld, except that no such written approval shall be required with respect to (i) an involuntary transfer caused by the death or incapacity of any such party, or (ii) a transfer of interests in connection with a bona fide financing transaction (which may include loans or equity investments), or a bona fide occupancy lease (which may include providing equity interests to a bona fide occupancy tenant) so long as Metropolitan, Columbia, Metropolitan/Columbia and/or the Developer remains a managing partner, or (iii) a transfer to an entity controlled by Metropolitan, Columbia, Metropolitan/Columbia and/or Developer, so long as Metropolitan, Columbia, Metropolitan/Columbia and/or the Developer remains a managing and controlling partner, or (iv) a transfer as provided in Section 502 hereof (the foregoing exceptions (i) through (iv) are referred to collectively as the "Transfer Exceptions"); nor without such written approval shall there be any other change in the ownership of such interests or in the relative distribution

thereof or change in the identity of the parties in control, or in the degree of control of the Developer, by any other methods or means, provided, however, that such approval shall not be required for transfers or changes in ownership aggregating no more than ten percent (10%) in the beneficial interest in the Developer (the "Percent Exception"). The Developer shall advise the Authority of any and all proposed changes in such interests and shall, in addition, furnish the Authority with an up-to-date list of all present and proposed new owners thereof whenever such changes aggregate more than ten percent (10%) beneficial interest in the Developer, and with any other information relating to such proposed change which the Authority shall reasonably require. Once a Certificate of Completion has been issued hereunder for the Project, there shall be no limitation imposed hereby relative to the legal or beneficial ownership of the Project or the Developer thereof.

b. After the delivery of the Deed and until the issuance of the Certificate of Completion, the Developer will not allow, except as otherwise expressly permitted in this Agreement, any liens or encumbrances to exist except (i) those existing on the Closing Date, (ii) any mortgages or other encumbrances (whether or not from a partner in the Developer or any affiliate thereof) given to secure, or leasehold interests created in connection with, the construction or permanent financing and (iii) cross

easements, utility easements and the like (each of which cross easements, utility easements, and the like, unless expressly permitted hereunder, shall be subject to the prior approval of the Authority, which approval shall not be unreasonably withheld and which approval or disapproval shall be made within thirty (30) days of the submission thereof to the Authority).

c. Except as permitted pursuant to the Transfer Exceptions or the Percent Exception (as to which no approval of the Authority shall be required) after the delivery of the Deed and until the issuance of the Certificate of Completion, the Developer will not make or suffer to be made any assignment, master lease (which shall not preclude bona fide occupancy leases), or any other manner of transfer of its interest in the Project Site, or in this Agreement, unless the Developer shall have complied with the following covenants, which shall be covenants that run with the land:

1. The transferee or transferees shall have been approved as such in writing by the Authority.
2. The transferee or transferees, by valid instrument in writing, satisfactory to the Authority, shall have expressly assumed for themselves and their successors and assigns, and directly to and for the benefit of the Authority, all obligations of any person or persons, including the Developer, to

begin and complete construction of the Improvements and all obligations of the Developer provided for in this Agreement. The fact that any transferee of, or any other successor in interest whatsoever to the Improvements, shall, for whatever reason, not have assumed such obligations, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit the Authority of or with respect to any rights or limitations or controls with respect to the construction of the Improvements thereon. It is the intent of this Article V, together with other provisions of this Agreement, to insure (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) that no transfer of or change with respect to ownership, possession, or control, shall operate legally or practically to deprive or limit the Authority of or with respect to any rights or remedies or controls provided in or resulting from

this Agreement and the construction of the Improvements thereon, that the Authority would have had had there been no such transfer or change. In the event of any such transfer without such assumption of obligations, the Developer shall pay to the Authority the expenses and costs of any actions or proceedings instituted to enforce all such obligations, conditions, and restrictions, and all of the Authority's said rights, remedies, and controls as against such transferee. Therefore, in the absence of a specific written agreement by the Authority to the contrary, no such transfer or approval thereof by the Authority shall be deemed to relieve the Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

3. There has been submitted to the Authority for review, and the Authority has approved, all instruments and other legal documents involved in effecting the proposed transfer; provided, however, that the Developer shall not be required to submit any partnership agreements to the Authority, but may be required to provide supporting information

as may be reasonably required by the Authority for its accurate understanding of the contemplated transfer prior to its approval of the transfer, including, without limitation, copies of the instruments and other legal documents filed with public offices to effect such transfer.

4. The Developer and its transferee or transferees shall comply with such other reasonable conditions as the Authority may find reasonably necessary and desirable in order to achieve and safeguard the purposes of this Agreement.

d. In the event of any transfer by Developer as permitted in this Section 501, all obligations, responsibilities and liability of the Developer under this Agreement and the Instruments shall cease, and the Authority shall look only to the transferee for the satisfaction of such obligations and responsibilities, and the assertion of such liability, provided however that the Developer shall remain liable for defaults incurred by Developer of its obligations and responsibilities hereunder occurring prior to such transfer. If the transferee shall fail or refuse to effect the cure of any violation under this Agreement, the Authority may institute such actions or proceedings against the transferee as the Authority deems appropriate, including actions and proceedings to compel specific

performance, subject to the provisions of Section 905 of this Agreement. Payment of all costs and expenses which may be incurred by the Authority in instituting and prosecuting such action or proceedings shall be governed by Section 701 of this Agreement.

Section 502: Mortgage of Property by the Developer.

a. The limitations contained in this Agreement relating to Developer's Right to encumber, pledge or convey its rights, title and interest in and to the Project by way of a bona fide mortgage shall terminate upon the issuance of the Certificate of Completion.

b. Notwithstanding any other provisions of this Agreement, the Developer shall at all times have the right to encumber, pledge, or convey its rights, title and interest in and to the Project Site and the Improvements thereon, by way of a bona fide mortgage or mortgages to secure the payment of any loan or loans obtained by the Developer, or to refinance any outstanding loan or loans therefor obtained by the Developer for any purpose; provided, however, that the Developer shall give prior written notice to the Authority of its intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such mortgagee(s) and any other information regarding the mortgagee(s) and mortgage documents which the Authority may reasonably require.

c. Mortgages on the Project Site and the Improvements thereon shall secure indebtedness related to the Project and may not secure or cross-collateralize indebtedness or obligations arising in connection with other properties unrelated to the development of the Project. Each such mortgagee shall agree that the proceeds of such indebtedness shall be used only in the development of the Project Site and the Improvements to be constructed thereon.

The holder of any such mortgage or its designee (including such a holder or its designee who obtains title to the Project Site and the Improvements thereon by foreclosure or action in lieu thereof, and including a party who obtains title through such holder or any purchaser at a foreclosure sale other than the holder or its designee) shall not be obligated by this Agreement to construct or complete the Improvements or to guarantee such construction or completion, but shall have the options described in Section 503 of this Agreement.

Section 503: Rights and Duties of Mortgagee Upon Acquisition Prior to Completion.

a. If a mortgagee or its designee, or a purchaser at a foreclosure sale, through the operation of its contract to finance the acquisition of the Project Site or the development of the Improvements thereon, or by foreclosure, or action in lieu of foreclosure, acquires fee simple title to the Project Site and the

Improvements thereon prior to the issuance of a Certificate of Completion, the mortgagee or its designee, or such other purchaser, shall have the following options only:

1. Complete construction in accordance with the approved Drawings and Specifications and Contract Documents for the Improvements and any approved Change Order, this Agreement, the PDA/DIP Plan, PDA Cooperation Agreement and Development Review Procedures and in all other respects comply with the provisions of this Agreement, or
2. Sell, assign, or transfer, with the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), fee simple title to the Project Site and Improvements thereon to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement by written instrument satisfactory to the Authority and recorded forthwith in the Suffolk County Registry of Deeds, or
3. Reconvey fee simple title to the Project Site and Improvements thereon to the City, in which event the provisions of Section 901 of this Agreement relative to resale shall apply.

b. In the event that a mortgagee or its designee, or such other purchaser, elects to complete construction pursuant to subsection (a) (1) above, or sells, assigns or transfers pursuant to subsection (a) (2) above, the Authority shall extend the time limits set forth in Section 303 herein as shall be reasonably necessary to complete construction of the Improvements in accordance with this Agreement, and upon such completion, the mortgagee, its designee or purchaser, as the case may be, shall be entitled to the Certificate of Completion pursuant to Section 304 of this Agreement.

c. In no event shall any mortgagee or its designee, or such purchaser be liable for defaults of this Agreement prior to the time it acquires title or takes possession of the Project Site or after it shall sell, assign, transfer or convey title or possession thereof, provided that development, ownership and operation of the Project Site shall be subject to compliance with this Agreement and shall require corrections of any such defaults within the time period allowed (as extended hereunder). Notwithstanding the immediately preceding sentence, in no event shall any mortgagee or its designee, or such purchaser be subject to personal liability for defaults of this Agreement while it owns or controls the Project Site, all such liability being hereby limited to the interest of said mortgagee or its designee, or such purchaser in the Project Site and Improvements thereon.

ARTICLE VI

PROVISIONS RELATING TO OPERATION AND MAINTENANCE

Section 601: Maintenance and Operation.

The Developer shall, at all times after the delivery of the Deed and until the Covenant Expiration Date, keep the Project Site and all Improvements thereon in good and safe condition and repair, and in the occupancy, maintenance and operation of the Improvements shall comply with all laws, ordinances, codes and regulations applicable thereto, subject however to the right of the Developer to contest in good faith all such laws, ordinances, codes and regulations applicable thereto before complying with the same.

ARTICLE VII

INDEMNIFICATION

Section 701: Reimbursement of City and Authority in Respect of Certain Litigation.

If the Developer shall be adjudged to be in violation of its obligations hereunder, the Developer shall pay all reasonable costs, expenses, judgments, decrees which may be incurred by the City or the Authority in any proceedings brought to enforce the obligations of the Developer, as set forth in the provisions of this Agreement, but only in the event, and to the extent, that the

City or the Authority so prevails. It is expressly understood, however, that the mortgagee, designee or other purchaser under any mortgage permitted hereunder shall not be liable to the City or the Authority hereunder for any costs, expenses, judgments, decrees or damages which shall have accrued against the Developer except that a mortgagee who becomes a mortgagee after, and who acquires title after, the Developer has become liable for any costs, expenses, judgments, decrees, or damages, notice of which have been duly recorded in Suffolk Registry of Deeds, shall take subject to (but not be personally liable for) such costs, expenses, judgments, decrees and damages associated with the Project.

ARTICLE VIII

INSURANCE

Section 801: Insurance Coverage.

a. Until the Covenant Expiration Date, the Developer shall keep the Improvements and personalty used in connection therewith insured by fire and extended coverage insurance and additional risk insurance to the same extent and amount which is normally required by institutional mortgagees with respect to similar properties in the City. Such insurance shall be in an amount sufficient to comply with the co-insurance clause applicable to the location and character of the Improvements or equipment, and

shall be in amounts not less than eighty percent (80%) of the then current replacement cost of such Improvements or equipment. Such replacement cost shall be agreed annually by the Developer and the insurer, and, upon request by the Authority, a certificate thereof shall be delivered to the Authority. All such insurance shall be in standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts, and shall have attached thereto a clause making the loss payable to the Developer, any mortgagees, and, subject to the rights of the Developer and the mortgagees, the City, and the Authority, all as their respective interests may appear. The inclusion of the Authority and the City as loss payees under insurance policies to be maintained by the Developer shall at all times be subordinate to, and shall in no way affect, the rights of any mortgagee named as a loss payee to apply the proceeds of insurance, at the election of such mortgagee, either (i) first, to the reconstruction, restoration or repair of the Improvements to the satisfaction of such mortgagee, with any balance of the insurance proceeds after the completion of such reconstruction, restoration or repair to be applied to the repayment or reduction of the mortgage indebtedness, with any remaining balance to be paid to the Developer and the City and the Authority, as their respective interests may appear, or (ii) first, to the repayment of any mortgage indebtedness, with any remaining balance to be

paid to the Developer and the City and the Authority, as their respective interests may appear.

b. Each insurance policy shall be written to become effective at the time the Developer becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Developer is subject to such risk or hazard.

c. Certificates of such policies and renewals shall be filed with the Authority and the City at least thirty (30) days prior to the expiration of current coverage.

Section 802: Non-Cancellation Clause.

All insurance policies shall provide that any cancellation, change or termination thereof shall not be effective with respect to the City or Authority until after at least thirty (30) days prior written notice has been given to the City and Authority to the effect that such insurance policies are to be cancelled, changed or terminated at a particular time.

Section 803: Procurement of Insurance if Developer Fails to do so.

If the Developer at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the City or the Authority at its option, may procure or renew such insurance, and all amounts of money paid therefor by the City or the Authority shall be payable by the Developer to the City or the Authority,

with interest thereon at the rate of twelve percent (12%) per annum from the date the same were paid by the City or the Authority to the date of payment thereof by the Developer. The City or the Authority shall notify the Developer, in advance, in writing of the date, purposes, and amounts of any such payments made by it.

Section 804: Developer's Obligations with Respect to Reconstruction, Restoration and Repair.

a. Whenever any Improvements, or any part thereof, shall have been damaged or destroyed prior to the Covenant Expiration Date, the Developer shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claims and any other monies provided for the reconstruction, restoration or repair of any such Improvements shall, to the extent in excess of \$250,000 (such amount to be increased from time to time by percentage increases in an index reasonably reflecting construction cost increases after the date hereof) and unless otherwise required to be distributed by any mortgagee, be deposited in a fully separate account of the Developer or held by the mortgagee holding a first mortgage on such Improvements (or such other institutional holder as the Authority may approve), for application, in accordance with then customary institutional construction loan requirements and

procedures, to or toward the payment of such reconstruction, restoration or repair, subject, however, to the provisions of Section 801(a) of this Agreement.

b. The insurance proceeds so collected shall be used and expended, subject to the provisions of Section 801(a) hereof for the purpose of fully reconstructing, restoring or repairing the Improvements which have been destroyed or damaged to a condition (to the extent that such insurance proceeds may permit) at least comparable to that existing at the time of such damage or destruction. Any excess proceeds after such reconstruction, restoration or repair has been fully completed shall be retained by the Developer, subject to the rights of any mortgagees of record permitted hereunder and the rights of the Authority and the City.

c. The Developer, with the written approval of the Authority (which shall not be unreasonably withheld) and of any mortgagees of record permitted hereunder (if required under the mortgage), may determine that all or any part of any such damage to or destruction of the Improvements shall not be reconstructed, restored or repaired, and in such event, the proceeds of any claims against insurers or others arising out of such damage or destruction, to the extent not used for reconstruction, restoration or repair shall be retained by the Developer, subject

to the rights of such mortgagees and the rights of the Authority and the City.

d. Any reconstruction, restoration or repair undertaken pursuant to the provisions of this Section shall in all material respects be in accordance with, and conform to, the provisions of the PDA/DIP Plan, the PDA Cooperation Agreement, the Development Review Procedures, the Drawings and Specifications and Contract Drawings for the Improvements and any approved Change Orders thereto, and the provisions of this Agreement, or as otherwise approved by the Authority.

e. In no event shall the Developer be obligated to incur costs for reconstruction, restoration and repair in excess of the proceeds, if any, received from claims which may have arisen and have been settled against the insurers on account of damage or destruction for reconstruction, restoration or repair and which the mortgagees permit to be used therefor. To the extent that insufficient monies are received, the Developer's obligation to reconstruct, restore or repair shall be reduced or eliminated, provided that any such reduced reconstruction, restoration or repair shall be subject to approval by the Authority with respect to the external appearance of open spaces, pedestrian walkways and courtyards and landscaping, or the external appearance of any building (including roof and penthouse). Developer agrees to exercise all reasonable efforts to obtain permits necessary to

reconstruct, restore or repair such Improvements, but in no event shall Developer be obligated under this Agreement to reconstruct, restore or repair such Improvements if applicable laws or regulations do not allow the same to be accomplished or if applicable permits, licenses, approvals and the like cannot be obtained.

Section 805: Commencement and Completion of Reconstruction.

Subject to the foregoing, the Developer shall commence to reconstruct, restore or repair any Improvements and equipment on the Project Site which have been destroyed or damaged prior to the Covenant Expiration Date applicable thereto, within a period not to exceed six (6) months after the insurance proceeds with respect to such destroyed or damaged property have been received by the Developer or by any mortgagee which will make such proceeds available therefor (or, if the conditions then prevailing require a longer period, such longer period as the conditions shall mandate), and shall diligently and with reasonable dispatch prosecute such reconstruction, restoration or repair to completion. If and to the extent that, from time to time the Developer demonstrates that it is unable or imprudent, for reasons beyond its control (which may include without limitation, strikes or unforeseen construction delays, unfavorable financing or construction markets, litigation or inability to obtain governmental approvals, permits, licenses, variances, exceptions

and the like) to commence or complete such reconstruction restoration or repair within such period, the Authority shall, from time to time, extend the time for commencement or completion thereof. Notwithstanding the foregoing, such reconstruction, restoration or repair shall in any event be completed within twenty-four (24) months after the start thereof, or such longer period as is reasonably required therefor.

ARTICLE IX

RIGHTS, REMEDIES AND PROCEDURES IN THE EVENT OF A DEFAULT BY DEVELOPER

Section 901: Default by Developer re Design Procedures, Construction, and Transfers.

Except for the provisions of Section 905 hereof, the default provisions of this Article IX shall cease to apply to the Project once a Certificate of Completion has been issued for the Project.

If after the delivery of the Deed the Developer shall fail or refuse to commence, diligently pursue or complete construction of the Project in accordance herewith, to comply with the Development Review Procedures applicable thereto, or if there is any unauthorized change in the legal and beneficial interests of the Developer with respect to ownership of such Project [or Developer] as provided in Section 501 hereof, the Authority shall notify the Developer in writing of any such default (the "Default Notice").

The Developer shall thereupon have 180 days from the receipt by it of such written notice to cure such default.

a. If the Developer does not cure such default within the 180-day period (or within such extended period of time as may be established by the Authority acting solely in its discretion) or where cure requires more than 180 days, if the Developer does not promptly begin such cure and thereafter diligently prosecute the same to completion, and if the then holders of mortgages do not exercise their rights to cure such default (as provided in Section 903 hereof), an Event of Default shall be deemed to exist.

At any time after the occurrence of an Event of Default, but only for so long as the same remains uncured, the Authority may invoke the remedies under Section 901(a) and 901(b) hereof on account of such Event of Default at any time within a two-year period after the date of the Default Notice. The Authority shall be deemed to "invoke its remedies hereunder" upon the earlier of a written demand for conveyance or reconveyance thereof pursuant to this Agreement or reentry in accordance with Section 901(b) herein. Failure of the Authority timely to invoke its remedies shall be deemed a waiver of the particular Event of Default and of the Developer's obligations herein which underlie such Event of Default.

(i) If an Event of Default occurs prior to the commencement of any substantial construction (demolition and

surface site work shall not be considered substantial construction, but the good faith commencement of excavation, foundation, and other subsurface work shall constitute substantial construction), then the Authority's sole remedy shall be to cause a reconveyance of the Property to the City only, pursuant to this Section 901(a)(i) and the related provisions of this Article IX in which event this Agreement shall terminate and be null and void without further rights, obligations or recourse to the parties except that the provisions of Sections 901(c) and 901(d) hereof shall not terminate.

(ii) If an Event of Default occurs after commencement of substantial construction, then the Authority's sole remedy shall be to institute such action and proceedings as may be appropriate against the Developer, including actions and proceedings to compel specific performance and payment of all damages, expenses and costs (subject to the provisions of Section 905 hereof).

To the extent that the Authority invokes the remedy provided in clause (i) above, the Developer shall promptly transfer possession of, and convey to the City by Quitclaim Deed, the Property, in its "as is" condition, provided that such conveyance shall be subject only to any existing mortgages of record thereon and other encumbrances permitted under this Agreement. If the

Developer shall fail so to convey, the Authority may institute such actions or proceedings as it may deem advisable as well as proceedings to compel specific performance and the payment of damages, expenses and costs by the Developer.

b. In the event of an Event of Default under clause (i) above, the Authority shall also have the right to re-enter and take possession of the Property on behalf of the City and to terminate (and revest and vest in the City) the fee simple estate therein, in the title condition described in Section 901(a) hereof, it being the intent of this, together with other provisions of this Agreement, that the conveyance of the Property to the Developer shall be made upon a condition subsequent to the effect that in the event of such an Event of Default prior to the commencement of substantial construction of the Improvements, the Authority at its option may declare a termination in favor of the City of the title to, and of all the rights and interests in, the Property; and that such title, and all rights and interests of the Developer, and any assigns or successors in interest, in the Property shall revert to the City; provided, that such condition subsequent and any revesting of title as a result thereof in the City shall always be subject to and limited by and shall not defeat, render invalid, or limit in any way the lien of any mortgage authorized by this Agreement, or any rights or interests

provided herein for the protection of the holders of such mortgages.

c. If the Developer or a mortgagee reconveys to the City pursuant to Section 901(a)(i), Section 905 or Section 503(a)(3) of this Agreement, or if title reverts in the City pursuant to Section 901(b) hereof, the Authority on behalf of the City shall, subject to Developer's Rights of Refusal described in Section 901(d) hereof, undertake with due diligence and in a commercially reasonable manner to resell the Property reconveyed under Section 901(a)(i) hereof, or the Project Site, or so much thereof as has been so reconveyed or which it has so re-entered under Section 905 or Section 503(a)(3) of this Agreement, and all Improvements thereon. In preparation for resale, the Authority shall consult with, and consider suggestions of, the Developer and any mortgagee as to methods and strategies of maximizing the net proceeds from the resale of, or so much thereof of, the Property or the Project Site. The Authority may attempt to resell the Property or the Project Site, or so much thereof, in an "as is" condition, and shall have no obligation to spend any funds in order to prepare the Property or the Project Site, or so much thereof, for resale. The resale shall be for cash only, unless the first mortgagee of record otherwise directs or approves. The proceeds of such resale, together with the net income, if any, derived by the Authority from its operation and management of the

Property or the Project Site, subsequent to such reconveyance to the City shall be used:

- (1) First, to pay all taxes, payments in lieu of taxes, public charges and other sums owing to the City, except for development impact project contributions and grants (which shall be distributed pursuant to Section 901(c)(5) hereof), with respect to the Property or the Project Site and the Improvements thereon up to the time of such reconveyance (or in the event the Property or the Project Site is, and the Improvements thereon are exempt from taxation during the period of ownership thereof by the City, an amount equal to such taxes as would have been payable if the same were not so exempt);
- (2) Second, in their respective order of priority to pay any and all mortgage indebtedness permitted or authorized by this Agreement and encumbering the Property or the Project Site (including, but not limited to, accrued and unpaid interest and other amounts payable thereunder);
- (3) Third, to pay all development impact project contributions and grants (the heretofore agreed to payments pursuant to Articles 26A and 26B of the Code, as described in Section 1001(b) hereof) owing to the

- City with respect to the Improvements on the Property or the Project Site up to the time of such reconveyance;
- (4) Fourth, in their respective order of priority, to pay any and all amounts to be paid to entities except Developer (but not excepting equity contributions from partners or affiliates of partners within Developer other than KBJV), representing equity contributions utilized in the development and construction of the Property or the Project Site as provided in Section 1101(a) hereof (including, but not limited to, accrued and unpaid interest and other amounts payable thereunder);
- (5) Fifth, in their respective order of priority, to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on the Property or the Project Site or the Improvements thereon, in favor of mechanics, materialmen or subcontractors;
- (6) Sixth, to reimburse the City and the Authority for
- (i) all out-of-pocket third party expenses reasonably and proximately incurred by the City and the Authority, including, without limitation, legal, management, brokerage, and repair costs, in connection with the recapture, management, conservation, construction and

reconveyance of the Property or the Project Site, or so much thereof, and the Improvements thereon and (ii) all so-called "internal" costs and expenses reasonably and proximately incurred by the City and the Authority, including the salaries of City and Authority personnel reasonably related to the direct administration and supervision of the Project, in connection with the recapture, management and resale of the Property or the Project Site or the Improvements thereon and all administrative and overhead costs in connection therewith;

- (7) Seventh, to pay or reimburse the City and the Authority for any amounts otherwise owing to the City and the Authority in connection with the Property or the Project Site from the Developer;
- (8) Eighth, to reimburse the Developer for 100% of the "Total Development Cost" allocable to the Property or the Project Site and the Improvements thereon plus an amount calculated at the compounded annual rate of 12.75% on 100% of the Total Development Cost allocable to the Property or the Project Site and Improvements thereon from the times incurred through the times said cost is reimbursed under this clause (8) of this Section. "Total Development Cost" means the amount

expended by the Developer in (x) the purchase of the Private Land, the Discontinued Parcels and Property and (y) the development and construction of the Improvements and (z) any operating deficits incurred (including interest expense incurred) prior to the month in which the gross income derived from the Project equals or exceeds all of the expenses for the Project (including interest expense incurred) (the "Breakeven Date") thereon less any profit theretofore realized by the Developer from the disposition of any interest therein or in any part or parcel thereof, and less any net income in excess of net losses realized by the Developer after the Breakeven Date from its use of the Property or the Project Site;

(9) Ninth, to reimburse the Developer for 100% of the fair market value as of the date of this Agreement of any Private Land and Discontinued Parcels that are included in the Project Site;

(10) Tenth, to reimburse the Developer for an amount calculated at the stated annual rate of [interest equal to the annual rate of interest on a first mortgage loan plus two (2) percent per annum] on 100% of the fair market value of any Private Land and Discontinued Parcels that are included in the Project Site from the

date of this Agreement through the times said value is reimbursed under Clause (9) of this Section 901(c);

(11) Eleventh, any balance remaining shall remain the property of the Authority.

d. The Developer shall have the following rights of refusal prior to any resale or other disposition by the Authority acting on behalf of the City of the Property or any portion of the Project Site and Improvements thereon under this Article IX after an Event of Default. Prior to entering into any transaction with a third party for resale or other disposition of all or any portion of the Project Site under this Article IX on terms relating to the required development thereof which differ in any material respect from the requirements imposed on Developer with respect thereto hereunder (the "Revised Development Conditions"), the Authority on behalf of the City shall first reoffer the Property or such portion of the Project Site and Improvements thereon to the Developer for at least a one-month period on the Revised Development Conditions. If Developer accepts such reoffer within such one-month period, the Property or the Project Site and Improvements thereon shall be reconveyed by the City to the Developer or its designee (subject to the approval of the Authority as permitted by the terms of Article V hereof) subject to the Revised Development Conditions which shall be substituted for the corresponding terms of this Agreement, and the PDA

Cooperation Agreement shall, if necessary, be revised accordingly, unless the Authority in good faith determines that Developer is not ready, willing and able to develop the Property or the Project Site in accordance with the Revised Development Conditions. If Developer does not exercise its rights within such one-month period, the Authority shall be free to resell or redispense of the Property or the Project Site, free of Developer's Rights of Refusal hereunder, at any time within one year after the date of the reoffer to Developer on terms which are no more favorable to the buyer than the Revised Development Conditions offered to Developer hereunder. If the Authority does not so resell, the Developer's Rights of Refusal shall apply prior to any subsequent resales or redispositions based on Revised Development Conditions. The Authority's determination, in the exercise of its reasonable judgment, as to whether Revised Development Conditions exist or as to whether the Authority's resale or redispense is on terms which are no more favorable to the buyer than the Revised Development Conditions offered to Developer hereunder shall be conclusive if such determination is made in good faith.

Section 902: Notices of Default to Mortgagees.

If the Authority gives written notice to the Developer of a default under this Agreement, the Authority shall forthwith furnish a copy of the notice to each of the mortgagees of record. Failure to provide any such mortgagee with a copy of such notice

shall render such notice invalid and ineffective. To facilitate the operation of this Section, the Developer shall at all times keep the Authority provided with an up-to-date list of names and addresses of mortgagees from whom the Developer has obtained loans secured by mortgages upon the Project Site and the Improvements thereon as permitted under this Agreement. Any such mortgagee or holder may notify the Authority of its address and request that the provisions of Section 1306 hereof as they relate to notices apply to it. The Authority agrees to comply with any such request.

Section 903: Mortgagee May Cure Default of Developer.

If the Developer has received notice from the Authority of a default under this Agreement and such default is not cured by the Developer before the expiration of the period provided therefor, any holder of record of a permitted mortgage on the Project Site may cure, as permitted under this Agreement, such default by giving written notice of its intention to do so to the Authority within ninety (90) days after the expiration of the period provided for Developer's cure thereof, and shall thereupon proceed with due diligence to cure such default. Any cure of a default hereunder by a mortgagee shall be deemed a cure of said default by Developer.

If any mortgagee elects so to cure any default, a reasonable extension of time for performance will be granted by the Authority

to enable the mortgagee, and its transferee, to obtain possession and control of the Project Site, by foreclosure or otherwise, and to correct such default, to satisfy the provisions of this Agreement, and to complete construction of the Improvements to the extent that the Developer, such mortgagee or its transferee will be entitled to receive a Certificate of Completion hereunder. In any event, so long as the mortgagee or its transferee is diligently pursuing a cure of the default, the Authority shall not invoke any of its remedies hereunder.

Section 904: Cross Easements.

If the Authority invokes its remedy under Section 901(a)(i), or the Developer or a mortgagee reconveys to the City pursuant to Section 905 or Section 503(a)(3) a portion, but less than all of the Project Site, then the Developer and the City agree each to grant easements to the other as may be required and appropriate for the construction and operation of the improvements on the property owned by each party. This provision shall survive until such time as a Certificate of Completion has been issued.

Section 905: Remedies for Other Defaults.

It is understood by the parties hereto that in the event any party shall fail to comply with or violate any of the provisions of this Agreement, then, except for defaults as provided in Section 210, and Section 901(a)(i) of this Agreement as to which the remedies prescribed therein are exclusive, any other party

hereto may institute such actions and proceedings as may be appropriate, including actions and proceedings to compel specific performance and payment of all damages, expenses, and costs, provided however that in lieu of actions and proceedings by the Authority to compel specific performance by Developer to complete construction of the Improvements, the Developer may elect to convey to the City the Project Site by Quitclaim Deed subject only to any existing mortgages and other encumbrances permitted under this Agreement (in which case the provisions of Section 901(c) and 901(d) shall apply). Neither these remedies nor that class of remedies more particularly described in this Agreement shall be exclusive unless specifically so described, provided, however, that the remedies prescribed in Section 901 for the defaults therein described respecting reconveyance are exclusive and that no other rights of reconveyance are to be implied hereunder. The provisions of this Section 905 shall survive the issuance of the Certificate of Completion hereunder, but shall terminate upon the Covenant Expiration Date.

ARTICLE X

DESIGNATION CONDITIONS

Section 1001: Compliance with Designation Conditions; Linkage.

a. The Developer shall at all times proceed hereunder in substantial conformity with the Designation Conditions. The

Designation Conditions shall, at Developer's request, from time to time, be reviewed by the Authority to the extent that Developer is unable to conform therewith by reason of applicable legal requirements or changed legal circumstances or other matters beyond the control of the Developer. Decisions made by the Authority pursuant to this Section 1001 after good faith reasonable attempts to preserve the essential rights and obligations of the parties shall be conclusive. Where any Designation Condition is inconsistent with this Agreement, the provisions of this Agreement shall govern. Otherwise, the provisions of this Agreement shall supplement, but not supersede, the Designation Conditions.

b. Among other things, one Designation Condition is that the Developer is required to comply with certain so-called "linkage policies". Linkage policies for the City of Boston are contained in Articles 26A and 26B of the Boston Zoning Code. Additionally, linkage policies which pertain particularly to the development of the Project are contained in the DIP Agreement and the PDA Cooperation Agreement. Prior to the execution of this Agreement, the Developer and the Authority have entered into the DIP Agreement and the PDA Cooperation Agreement which set forth the agreements of the Developer in compliance with the linkage policies contained in Articles 26A and 26B of the Code and with

the requirements of the Community Benefits Phase in the Designation Conditions.

ARTICLE XI

CONDITIONS PRECEDENT TO CERTAIN CONSTRUCTION

Section 1101: Conditions Precedent to Certain Construction.

As conditions precedent to the commencement of construction of the Improvements, the Developer shall satisfy the following conditions (which, if not satisfied by the Construction Commencement Date, shall constitute a default for which provisions of Section 901 of this Agreement apply):

a. Not later than commencement of construction Developer shall submit to the Authority a copy (certified by Developer to be true and correct) of a firm commitment, issued by a lender which is reasonably satisfactory to the Authority and which is an Institution as herein defined, whereby such lender agrees to furnish construction financing for the Improvements contained in the Drawings and Specifications together with evidence satisfactory to the Authority that Developer has demonstrated, to the satisfaction of such lender, the availability of equity capital which, when combined with the financing to be provided by such lender is adequate to complete the Improvements (and any off-site improvements associated therewith) in accordance with the requirements of this Agreement, provided however that, in place of

the above, the Developer may submit to the Authority evidence satisfactory to the Authority that the Developer or any partner thereof will use its own resources to finance construction of the Improvements. Such commitment shall be accompanied by such further materials as the Authority may reasonably request evidencing satisfaction of, or Developer's ability to satisfy, the conditions to lending therein set forth. Institution shall mean any one of the following:

(i) a bank, insurance company, savings and loan association, credit corporation, trust company or a corporation, trust or association qualifying as a real estate investment trust under the provisions of Section 856 of the Internal Revenue Code of 1986 (or like future provisions of such Code) chartered under the laws of the United States of America or any State thereof, and with a principal place of business in one of such States and a combined capital and surplus account (or, in the case of a mutual company, the equivalent thereof) of not less than \$400,000,000.

(ii) an educational institution with a capital endowment of not less than \$400,000,000.

(iii) a pension fund established by and for any business corporation or corporations, or by and for any group of employees of a governmental body or of a

religious or educational institution or for any trade union, and, in each case, having a net worth, determined in accordance with sound, conservative accounting practice, of not less than \$400,000,000.

(iv) any combination of the foregoing with a combined net worth, capital and surplus account, capital endowment and the like of not less than \$400,000,000.

b. Not later than commencement of construction, Developer shall submit to the Authority:

(i) Reasonable evidence of the capability and engagement of the Architect and Contractor engaged by Developer for the construction of the Improvements shown and described in the Drawings and Specifications, of undertaking the work and the engagement of such Architect and Contractor to undertake the work.

(ii) A copy of a building permit issued by the Inspectional Services Department of the City fully covering the Improvements to be constructed, together with evidence satisfactory to the Authority that all fees in connection therewith have been paid.

(iii) A copy of a performance and payment bond or other assurance of completion of the Improvements contained in the Drawings and Specifications satisfactory in form and amount to the Authority.

Notwithstanding the foregoing, if the construction mortgagee accepts some form of completion assurance, other than a performance and payment bond, the Authority shall accept such form of assurance hereunder with the City named as co-obligee with such mortgagee.

The Developer shall, at all times, keep the Authority fully and currently advised of the status of all aspects of Developer's progress in meeting the conditions of this Agreement with respect to the development of the Project Site, including, without limiting the generality of the foregoing, development of the Design Documentation, securing of construction financing, and arrangements for construction. All contracts entered into by Developer respecting the development of the Project Site shall obligate the parties to act in a manner consistent with the appropriate obligations of Developer under this Agreement. During the implementation of any such contracts the Authority shall have the right to review all aspects of the work performed thereunder, so long as such review does not interfere with the progress of construction, in order to insure that such work is being undertaken in a manner consistent with the obligations of Developer under this Agreement.

ARTICLE XII

ANTI-DISCRIMINATION; HIRING

Section 1201: Anti-Discrimination; Hiring.

The Developer agrees that in the construction of the Improvements, and otherwise through the Covenant Expiration Date, it shall comply and shall in good faith cause all contractors, tenants and users of the Improvements to comply with all applicable laws, ordinances, regulations and orders from time to time in effect relating to non-discrimination, equal employment opportunity, contract compliance and affirmative action.

Section 1202: Construction Employment Plan.

In connection with the construction of the Improvements, Developer shall submit a Boston Residents Construction Employment Plan (the "Construction Employment Plan"), as required by Ch. 12 of the Ordinances of 1986, as amended by Ch. 17 of the Ordinances of 1986, and by the Mayor's Executive Order of July 12, 1988, entitled "Executive Order Extending the Boston Residents Jobs Policy", to ensure that its contractor and those engaged by said contractor for the construction of the Improvements comply with the Boston Residents Construction Employment as those standards are set forth in the Construction Employment Plan. The Plan shall include provisions for monitoring, compliance and sanctions. The Construction Employment Plan conforming to the requirements hereof was executed by OJCS, the Boston Employment Commission and the

Developer on December __, 1989 and is attached hereto as Exhibit M.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

Section 1301: Obligations and Rights and Remedies Cumulative and Separable.

The respective rights and remedies of the City, the Authority and the Developer provided by this Agreement or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other such rights or remedies.

Section 1302: Amendment.

This Agreement shall constitute the entire agreement among the parties hereto as to the subject matter hereof; it may be amended only by an instrument in writing signed by the City, acting by and through the Authority, the Authority and the Developer, and approved by any mortgagee permitted hereunder.

Section 1303: Severability.

The provisions of this Agreement are severable, and if any such provision or the application of such provision shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions of this

Agreement which shall remain in full force and effect.

Section 1304: Time of Essence; Covenants to be Enforceable.

Time is of the essence in the performance of this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them and shall diligently, promptly and punctually fulfill the conditions applicable to each of them.

The covenants herein contained relating to the Project, which are expressly stated to be covenants running with the Project Site, shall be stated or incorporated by reference in any instrument of conveyance or lease and shall in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, the City and the Authority against the Developer (including its successors and assigns to or of the Project Site, the Improvements thereon, or any part thereof or any interest therein and any party in possession or occupancy of the Project Site, the Improvements thereon or any part thereof). In amplification, and not in restriction of the provisions hereof, it is intended and agreed that the City and the Authority shall be deemed beneficiaries of such covenants, both for and in their own right and also for the purposes of protecting the interests of the

community and the other parties, public or private, in whose favor or for whose benefit such covenants have been provided.

Section 1305: City and Authority Staff and Officers Barred From Interest.

a. No member, official or employee of the City or the Authority shall have any personal interest, direct or indirect, in this Agreement or the Developer, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official or employee of the City or the Authority shall be personally liable to the Developer or any successor in interest in the event of any default by the City or the Authority or for any amount which may become due to the Developer or to its successor or on any obligations under the terms of this Agreement.

b. The Developer covenants that it has not employed or retained any company or person (other than a full-time bona fide employee working for the Developer and a party working for the Developer pursuant to a contract) to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person (other than such an employee or party) any gift, contribution, fee, commission, percentage, or brokerage fee,

contingent upon or resulting from the execution of this Agreement.

Section 1306: Approvals and Notices.

Where provisions of this Agreement require that notices, consents, approvals, authorizations, certifications, reviews and the like are required to be given to the City or the Authority or received from the City or Authority hereunder, such provisions shall be deemed to provide that such notices, consents, approvals, authorizations, certifications, reviews and the like be given to or received from the Authority, on its own behalf and acting as agent on behalf of the City. In addition and not in limitation of the Authority's rights and responsibilities on its own behalf hereunder, the Public Facilities Commission of the City of Boston and the Real Property Board of the City of Boston, on behalf of the City of Boston, have delegated to the Authority all of their respective powers and functions to act hereunder with respect to all construction and design approvals required herein and with respect to all other matters herein. The Developer has entered into this Agreement in reliance upon such delegation to the Authority. Accordingly, where, pursuant to this Agreement, any document or proposed action by the Developer is submitted by it to the Authority with respect to all construction design approvals required herein and following delivery of the Deed and payment of the purchase price with respect to all other matters herein, and the Developer has been notified in writing by the Authority that

the same is approved or is satisfactory, such determination shall be conclusively deemed to be a final determination by both the Authority and the City with respect to such particular document or proposed action for which such approval or notice of satisfaction was given.

Where the consent or approval of the City or Authority is required hereunder, such consent or approval shall not be unreasonably withheld, but the same shall be valid and binding only if given in a writing which is signed by a duly authorized official, provided however that whenever this Agreement requires that an approval or disapproval be given within a specified time period, a failure to approve or disapprove within said period shall be deemed a valid and binding approval thereof, but only if the requirements hereof as to notice and request for approval have been complied with by Developer. Any reference in this Agreement to the number of days within which any action must be taken by any party hereto shall mean (i) business days when the number of days is thirty (30) or fewer and (ii) calendar days when the number of days is more than thirty (30).

Notices shall be deemed given when deposited in the United States mail and sent registered or certified mail, postage prepaid, to the principal office of the party to whom it is directed, which is initially as follows:

Developer:	Kingston Bedford Joint Venture c/o Metropolitan/Columbia Plaza Venture
------------	---

125 Summer Street
Boston, MA 02110
Attn: Robert L. Green

with a copy to: David Marc Drew, Esq.
Metropolitan Structures
111 E. Wacker Drive, Suite 1200
Chicago, Illinois 60601

with a copy to: Joel H. Sirkin, Esq.
Hale and Dorr
60 State Street
Boston, MA 02109

with a copy to: Fletcher H. Wiley, Esq.
Wiley & Richlin, P.C.
75 Arlington Street, Suite 1010
Boston, MA 02116

with a copy to: William D. Chin, Esq.
3 Center Plaza
Boston, MA 02108

City: City of Boston
Public Facilities Department
26 Court Street, 6th Floor
Boston, MA 02108

Authority: Boston Redevelopment Authority
City Hall Square
Boston, MA 02201
Attn: Director

with a copy to: Boston Redevelopment Authority
City Hall Square
Boston, MA 02201
Attn: Chief General Counsel

The parties shall promptly notify each other of any change of their respective addresses set forth above.

Any requests for approvals made by Developer to the City or Authority where such approvals shall be deemed granted after a period of non-reply by the City or the Authority shall, as a

condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in bold face type:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY

FAILURE TO RESPOND WITHIN _____ DAYS

SHALL RESULT IN AUTOMATIC APPROVAL"

Notice and other communications to mortgagees shall be deemed given when deposited in the United States mail and sent registered or certified mail, postage prepaid, to the last known address of the party concerned.

Section 1307: Matters to be Disregarded.

The index to and titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 1308: Obligations to Continue.

Except as to obligations expressly or by clear implication required to be performed at or prior to the time of Closing of the sale and conveyance of title to and delivery of possession of the Property, and except as otherwise herein expressly provided with respect to issuance of the Certificate of Completion, the provisions of this Agreement and each of the Instruments, except as otherwise expressly provided therein, shall survive the time of Closing and the sale and conveyance of title to and the delivery

of possession of the Property to the Developer until the Covenant Expiration Date. Thereafter, upon notice by Developer or any mortgagee requesting the City or the Authority to provide an instrument suitable for recording acknowledging the expiration of this Agreement, including the terms, covenants and conditions contained herein, and of the Instruments, the City or the Authority shall provide such an instrument to the Developer or mortgagee, as the case may be, which instrument, when executed by the Authority and recorded with the Suffolk Registry of Deeds, shall conclusively establish the expiration of this Agreement, including the terms, covenants and conditions contained herein, and the Instruments, except as otherwise expressly provided therein. Upon the failure of the City or the Authority to supply such instrument within fifteen (15) days of notice of such request, the Developer or mortgagee may record an affidavit with said Deeds attesting to the expiration of this Agreement, the terms, covenants and conditions contained herein, and of the Instruments which, except as otherwise expressly provided therein, upon recording with said Deeds, shall conclusively establish the expiration of this Agreement, the terms, covenants and conditions contained herein and of the Instruments, except as otherwise expressly provided therein.

Section 1309: Excusable Delays.

For the purposes of any of the provisions of this Agreement, neither the City nor the Authority nor the Developer, as the case may be, shall be considered in default of its obligations hereunder in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and not due to its fault or negligence, including but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, or other casualties, epidemics, quarantine restrictions, labor disputes, litigation, freight embargoes, and unusually severe weather or delays of contractors and subcontractors due to such causes; it is the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such party shall be extended for the period of the enforced delay, provided, that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other parties thereof in writing stating the cause or causes thereof and requested an extension for the period of the enforced delay. In calculating the length of the delay, the City and the Authority shall consider not only actual work stoppages but also any consequential delays resulting from such stoppages as well. In no event shall any inability to secure a building permit

(unless caused by the City, the Authority or matters beyond the Developer's reasonable control) or financing difficulty be a cause for an extension under this Section 1309.

Section 1310: Agreement Binding on Successors and Assigns.

The respective provisions of this Agreement, in accordance with their terms, shall be binding upon, and shall inure to the benefit of the successors and assigns of the Developer and any public body succeeding to the interests of the City or the Authority.

Section 1311: Limitation of Developer's Liability.

The liability of the Developer under this Agreement and under guaranties, covenants, certifications and the like delivered pursuant hereto shall be limited solely to the assets and property of the Developer with respect to the Project but in any event not to exceed, in the aggregate, five hundred thousand dollars (\$500,000.00), and no partner, venturer, trustee, beneficiary, shareholder, officer, director or the like of the Developer, from time to time, or any such person's or entity's separate assets or property shall have or be subject to any personal liability with respect to any obligation or liability of the Developer hereunder or thereunder. A deficit capital account of a partner of the Developer shall not be deemed to be a liability of such partner nor an asset or property of the Developer. Nothing stated herein shall enlarge the remedies of the City and the Authority against

the Developer for any default beyond those set forth in Article IX of this Agreement.

Notwithstanding anything else to the contrary contained herein or in the Instruments, liability arising under this Agreement and under any Instrument shall be limited to the interest of the Developer in the Project (including the proceeds and profits arising therefrom), but not to exceed five hundred thousand dollars (\$500,000.00).

Section 1312: Construction of Exhibits.

In case of any conflict between the provisions of this Agreement and any of the Instruments, the provisions of this Agreement shall govern, unless expressly provided otherwise in an Instrument.

Section 1313: Waivers.

Any right or remedy which the City, the Authority or the Developer may have under this Agreement, or any of the provisions, may be waived in writing, without execution of a new or supplementary Agreement, but any such waiver shall not affect any other rights not specifically waived, and no waiver by the Developer of a right under Section 901 hereof shall be effective unless approved in writing by everyone then entitled to be given notice under Section 902 hereof. The City or the Authority, in writing,

may waive any provisions herein contained for its or their benefit.

Section 1314: Sole Obligation of Authority and City.

The sole obligation of the Authority and the City hereunder shall be to perform timely their respective duties set forth hereunder with respect to (i) approvals required of them, (ii) Final Designation of Developer, (iii) the performance of the covenants and obligations required of them, (iv) conveyance of the Property, (v) removal of the Hazardous Wastes from the Property and (vi) any Conditions required of them. The City and the Authority shall, however, fully cooperate with and publicly support Developer in reasonable efforts to satisfy each of the Conditions including, without limitation, to obtain all such permits, licenses and approvals from other governmental authorities of the City and the Commonwealth of Massachusetts; provided, however, that neither the City nor the Authority guaranty the issuance of any such approvals; it being agreed that the obligations of the Developer set forth in this Agreement are expressly conditioned upon the active cooperation and public support by the City and the Authority of the Developer's efforts to obtain from the appropriate municipal and state bodies and agencies all such permits, approvals, and licenses which may be necessary or desirable in order to carry out the development of

the Project in accordance with the PDA/DIP Plan.

Section 1315: Entire Agreement.

This Agreement is the final expression of, and contains the entire agreement among, the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements with respect thereto.

Section 1316: Status Reports.

The Authority shall, within ten (10) days after written request therefor by the Developer or any mortgagee, provide a certificate in writing, as requested or applicable, that the Agreement or any particular section hereof or Exhibit attached hereto specified by the requesting party is in full force and effect and unmodified, or in what respects the Agreement is no longer in force or effect or has been modified, or that the Developer is in compliance with this Agreement or any particular section hereof or Exhibit attached hereto specified by the requesting party, or, in the case of any non-compliance, in what respects there is not compliance; or as to any other matter reasonably related to the Project which the requesting party may reasonably request of the Authority. The Authority hereby authorizes the Director of the Authority to execute and deliver any such certificate on behalf of the Authority.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement in three (3) counterparts to be signed, sealed and

delivered by their duly authorized officers or representatives,
respectively as of the day and year first above written.

APPROVED AS TO FORM:

CITY OF BOSTON, acting by and
through the BOSTON REDEVELOPMENT
AUTHORITY (acting pursuant to powers
delegated to the Authority by the
PUBLIC FACILITIES COMMISSION)

Chief General Counsel
Boston Redevelopment
Authority

By _____

Date of execution:

BOSTON REDEVELOPMENT AUTHORITY

Mayor

By _____
Director

Date of execution:

KINGSTON BEDFORD JOINT VENTURE, A
MASSACHUSETTS GENERAL PARTNERSHIP

By _____

Date of execution:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston

, 1990

Then personally appeared before me the above-named Stephen Coyle, Director of the Boston Redevelopment Authority, who executed the foregoing Agreement on behalf of the Boston Redevelopment Authority and acknowledged the same to be the free act and deed of said Authority.

Before me,

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston

, 1990

Then personally appeared before me the above-named Stephen Coyle, Director of the Boston Redevelopment Authority, who executed the foregoing Agreement on behalf of the Boston Redevelopment Authority, acting for the City of Boston (pursuant to powers delegated to the Authority by the Public Facilities Commission), and acknowledged the same to be the free act and deed of the Boston Redevelopment Authority, acting for the City of Boston.

Before me,

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk , 1990

Then personally appeared the above-named _____,
the _____ of _____,
and acknowledged the foregoing instrument to be the free act and
deed of _____.

Before me,

Notary Public

My commission expires:

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 1990, between the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "BRA"), and the MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "MBTA").

The parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 101: Defined Terms.

For the purpose of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

- a. "BRA" shall mean the Boston Redevelopment Authority.
- b. "Closing" shall mean the consummation of the sale of a particular Phase Parcel to the BRA on the Closing Date for such Phase Parcel and the performance by the parties hereto of their respective obligations in connection therewith as contemplated by the terms of this Agreement.
- c. "Closing Date" shall mean the date established in Sections 202 and 205 of this Agreement as the date for the sale of a

particular Phase Parcel to the BRA, as the same may be extended in accordance with the terms of Article II of this Agreement.

d. "Condition Date" shall mean the date on which all of the Conditions have been satisfied with respect to a particular Phase Parcel. Notwithstanding any other provision of this Agreement, in the event the Closing Date occurs prior to the Condition Date for a particular Phase Parcel, the Condition Date shall survive the Closing Date for such Phase Parcel.

e. "Conditions" shall mean the following conditions precedent to the obligation of the BRA to purchase any Phase Parcel:

(i) The BRA shall have made the final designation of the Developer as redeveloper of the Property and the MBTA shall have approved such recommendation, which approval shall not be unreasonably withheld.

(ii) The MBTA shall have recorded with Suffolk Deeds a consolidation and disposition plan of land whereby the land included in the Property is consolidated into the six parcels of land shown as Phase Parcel 18-1A, Phase Parcel 18-1B, Phase Parcel 18-2, Phase Parcel 18-3A, Phase Parcel 18-3B and the Public Plaza Phase Parcel on the Property Plan.

(iii) The MBTA shall have caused the particular Phase Parcel to be free of Hazardous Wastes if and to the extent required by Section 203 hereof.

(iv) The Massachusetts Secretary of Environmental Affairs shall have issued a Certificate that the Final Environmental Impact Report required by the Secretary in accordance with his Certificate on Environmental Notification Form pertaining to the Property or one or more Phase Parcels does adequately and properly comply with the Massachusetts Environmental Policy Act, M.G.L. Ch. 30, § 62-62H inclusive ("MEPA"), and with the regulations implementing MEPA.

(v) Except with regard to the Public Plaza Phase Parcel, the Developer and the BRA shall have entered into a Sale and Construction Agreement (the "Sale and Construction Agreement") for purchase and sale of the Property by the Developer from the BRA, the Developer shall have proposed a particular Phase Parcel for purchase and development by the Developer and such development of the Phase Parcel shall have been approved by the BRA and the Zoning Commission of the City of Boston and the Developer shall be ready, willing and able to purchase the particular Phase Parcel from the BRA.

(f) "Deed" shall mean, in the case of a sale of any Phase Parcel, the instrument to be recorded in the Suffolk County Registry of Deeds in Boston, Massachusetts, whereby the MBTA conveys such Phase Parcel to the BRA.

(g) "Design Documentation" shall mean the several stages of documentation which are set forth in the Development Review

Procedures and which are to be submitted to the BRA by the Developer, and as provided herein, to the MBTA.

(h) "Developer" shall mean any party or entity and any affiliated entity thereof finally designated by the BRA as the developer of the Property or a particular Phase Parcel.

(i) "Development Review Procedures" shall mean the procedures set forth in Exhibit A attached hereto and made a part hereof, to be followed by the Developer in obtaining all approvals required hereunder of the Design Documentation for each Phase.

(j) "Event of Default" shall mean the happening of one or more of the matters described as such in Section 401 or 402 of this Agreement with respect to a particular Phase Parcel; it being agreed that an Event of Default as to a particular Phase Parcel shall not constitute an Event of Default for any other Phase Parcel, which has been purchased by the BRA prior to the occurrence of said Event of Default.

(k) "Hazardous Wastes" shall mean "oil", "chemical substance or mixture", "hazardous wastes", "toxic substances", "hazardous substances" and "hazardous materials" as defined in the Comprehensive Environmental Response and Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et. seq. ("CERCLA"); the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq. ("RCRA"); Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499 (signed into law October 17, 1986)

("SARA"); Toxic Substance Control Act ("TSCA"); Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E; Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et. seq.; or any other state, federal, superlien or environmental clean-up or disclosure statutes now or hereinafter enacted and any regulations promulgated thereunder (the "Hazardous Waste Removal Statutes").

(l) "Improvements" shall mean all structures and amenities to be constructed by the Developer with respect to each particular Phase.

(m) "MBTA" shall mean the Massachusetts Bay Transportation Authority.

(n) "MBTA Vote" shall mean the votes of the MBTA Board of Directors on _____, 1989 to approve the sale of the Property to the BRA.

(o) "Permitted PDA Uses" shall mean the uses designated and permitted by the PDA/DIP Master Plan or the PDA Development Plan for a particular Phase, as the same may be amended from time to time.

(p) "Phase" shall mean a particular Phase Parcel and the Improvements to be constructed thereon by the Developer.

(q) "Phase One Phase Parcels" shall mean Phase Parcel 18-1B and Phase Parcel 18-2 shown on the Property Plan.

(r) "Phase Parcel" shall mean any parcel of land including without limitation the Public Plaza Phase Parcel, shown on the Property Plan or any amended Property Plan approved by the BRA and MBTA pursuant to Section 202 of this Agreement.

(s) "PDA Development Plan" shall mean the Development Plan with respect to a particular Phase Parcel.

(t) "PDA/DIP Master Plan" shall mean the Planned Development Area Master Plan and Development Impact Project Plan with respect to a Planned Development Area of greater than five (5) acres pursuant to Sections 3-1A.a and 26A-3 of the City of Boston Zoning Code, submitted to and approved by the Zoning Commission of the City of Boston on September 11, 1989 and executed by the Mayor of Boston on September 13, 1989, as said PDA/DIP Master Plan may be amended from time to time.

(u) "Property" shall mean Phase Parcel 18-1A, Phase Parcel 18-1B, Phase Parcel 18-2, Phase Parcel 18-3A, Phase Parcel 18-3B, and the Public Plaza Phase Parcel shown on Sheet 1 of the Property Plan, which property is subject to the easements and encumbrances shown on Sheet 2 of the Property Plan.

(v) "Property Plan" shall mean the plan entitled "Ruggles Center/Parcel 18 Plan of Land in Boston, Massachusetts, Roxbury District, Suffolk County", prepared by Survey Engineers of Boston dated _____, 1989 and attached hereto as Exhibit B.

(w) "Public Plaza Phase Parcel" shall mean the parcel of land shown as the Public Plaza Phase Parcel on the Property Plan or any amended Property Plan approved by the BRA and MBTA pursuant to Section 202 of this Agreement.

(x) "Transportation Easements" shall mean the easements reserved by the MBTA for present and future transportation needs which shall encumber the Property and are set forth on Sheet 2 of the Property Plan.

ARTICLE II

TRANSFER OF THE PROPERTY AND PAYMENT THEREFOR

Section 201: Agreement to Sell.

Subject to all of the terms, covenants and conditions of this Agreement, the MBTA agrees to sell and the BRA covenants and agrees to purchase the Property or such Phase Parcels thereof as are designated by the BRA hereunder all upon such terms as are set forth herein.

Section 202: Rights of the BRA To Designate Phase Parcels.

The BRA shall have the right to designate the Phase Parcels, in accordance with the Property Plan, for purchase and development in such sequence and in accordance with such schedule as the BRA shall determine.

From time to time, the BRA shall inform the MBTA by written notice of its designation of a particular Phase Parcel for

purchase (the "Phase Parcel Designation Date"). Such written notice shall specify the Closing Date for the Phase Parcel which will be not earlier than 30 days nor later than 60 days from the date of notice thereof.

The BRA shall have the right to modify from time to time the number of Phase Parcels and the respective location, boundaries and area of each such Phase Parcel within the Property, provided that the MBTA approve such modification, which approval shall not be unreasonably withheld or delayed. The MBTA shall respond to any request of the BRA to modify the designation of Phase Parcels within thirty (30) days of receipt thereof, indicating either approval of such request, or informing the BRA that the MBTA requires additional time to consider such request. In the event the MBTA does not respond within thirty (30) days after receipt of the BRA's request for modification, or after such response, if the MBTA does not inform the BRA of its approval or disapproval of the modification within ninety (90) days after receipt of the BRA's request for modification, the approval of the MBTA shall be deemed granted.

Section 203: Condition of Property to be Conveyed.

Prior to the conveyance of a particular Phase Parcel to the BRA, the MBTA shall cause the Phase Parcel to be free of Hazardous Wastes to the extent required by the Hazardous Waste Removal Statutes (provided, however, with respect to the Public Plaza

Phase Parcel, the MBTA shall have no obligation to cause the Public Plaza Phase Parcel to be free of Hazardous Wastes, and provided further, with respect to Parcels 18-3A and 18-3B, the MBTA shall not be required to expend an amount greater than the purchase price for said Phase Parcels in connection with the removal of the Hazardous Wastes from said Phase Parcels) and in connection therewith the MBTA will deliver to the BRA and the Developer a certificate or other appropriate statement from Haley & Aldrich, Inc. in form and substance reasonably acceptable to the BRA and the Developer that the Property is free of Hazardous Waste to the extent required by the Hazardous Waste Removal Statutes and that such Hazardous Wastes located on the Phase Parcel, if any, have been removed in accordance with the Hazardous Waste Removal Statutes. [To the extent that a particular Phase Parcel is still burdened by Hazardous Wastes at the time of conveyance to the BRA, the MBTA will enter into an indemnity agreement mutually agreeable to the parties indemnifying and holding harmless the BRA and any successor owner of said Phase Parcel from any and all costs arising from compliance with the Hazardous Waste Removal Statutes.] Between the date of this Agreement and the Closing Date for the last Phase Parcel, the MBTA shall not use the Property for any purpose and shall keep all portions of the Property not yet conveyed to the BRA in the same condition as of the date hereof, free of all structures and

improvements, free of all licensees, tenants or occupants, and free of all Hazardous Wastes, provided, however, if the BRA requests a modification pursuant to Section 202 which would result in conveyance and development of less than all the Property, the BRA and MBTA may enter into an agreement regarding the use of the Property not to be conveyed to the BRA. The MBTA will not mortgage, pledge or otherwise hypothecate or burden the Property and will not grant any easements or otherwise encumber the Property without the prior written approval of the BRA and the Developer. On the applicable Closing Date, the particular Phase Parcel to be conveyed shall be free of all structures and improvements, free of all licensees, tenants or occupants, free of all encumbrances and free of all Hazardous Wastes to the extent required per this Section 202.

With respect only to Phase Parcel 18-3A and Phase Parcel 18-3B, if the cost to cause either of said Phase Parcels to be free of Hazardous Wastes to the extent required by the Hazardous Waste Removal Statutes exceeds the purchase price for said Phase Parcels, the MBTA and BRA will confer with the Developer to select an alternative means of development that reduces the cost to cause said Phase Parcels to be free of Hazardous Wastes. If the costs to cause said Phase Parcels to be free of Hazardous Wastes are reduced so that they are equal to or less than the purchase price for said Phase Parcels, the MBTA shall cause said Phase Parcels to

be free of Hazardous Wastes to the extent required by the Hazardous Waste Removal Statutes. If the costs to cause said Phase Parcels to be free of Hazardous Wastes remain greater than the purchase price for said Phase Parcels, the MBTA may elect not to cause said Phase Parcels to be free of Hazardous Wastes, in which event, the BRA shall have the option to either purchase said Phase Parcels and off set the price by the amount determined to be the cost to remove such Hazardous Wastes from said Phase Parcels up to the amount of the purchase price or not to purchase said Phase Parcels.

Until conveyance to the BRA, the MBTA shall have legal responsibility for all portions of the Property not yet conveyed to the BRA, including without limitation, the responsibility to repair and maintain the same and the responsibility for any injury to persons or property thereon.

Section 204: Purchase Price.

The agreed purchase price for each Phase Parcel except for the Public Plaza Phase Parcel shall be Ten (\$10.00) Dollars per square foot of land contained therein. The agreed purchase price for the Public Plaza Phase Parcel shall be One (\$1.00) Dollar. If on the date the MBTA transfers a particular Phase Parcel to the BRA, the MBTA has failed to remove all Hazardous Wastes as required in Section 203 of this Agreement, the purchase price shall be adjusted in an amount reasonably determined to be the

cost to remove such Hazardous Wastes from the particular Phase Parcel prepared by independent third party contractors and submitted by the Developer to the BRA.

Section 205: Time of Sale.

Subject to the satisfaction of the applicable Conditions and other terms of this Agreement, the sale, conveyance and delivery of possession of each of the Phase Parcels shall take place on the Closing Date, specified by the BRA in the designation notice delivered by the BRA to the MBTA pursuant to Section 202 of this Agreement, at the offices of _____, or at such other place as the parties may designate, provided, however, at such time as the BRA designates the first Phase Parcel for purchase, the BRA shall be obligated to designate simultaneously therewith the purchase of the Public Plaza Phase Parcel. Notwithstanding the foregoing, if, as of the Closing Date, the Condition Date for such Phase Parcel shall not have occurred and the BRA elects not to waive the satisfaction of the Conditions or to otherwise extend the satisfaction of the Conditions or to otherwise extend the satisfaction of any Condition beyond the Closing Date, the MBTA shall, from time to time, extend the Closing Date for such Phase Parcel for a period which is reasonable under the circumstances, but in any event, the

Closing Date shall be extended at least until the occurrence of the Condition Date for such Phase Parcel.

Section 206: Title and Instrument of Conveyance.

When the BRA purchases any Phase Parcel, the same shall be conveyed by a good and sufficient Quitclaim Deed running to the BRA, provided, however, as to any portion of the Phase Parcel to be conveyed, which is described on Exhibit C, the MBTA shall be permitted to except said portion from the implied covenants of the Quitclaim Deed and to convey said portion by Release Deed. [OPEN] The title to be delivered as to each Phase Parcel shall be a good and clear record and marketable fee simple title and in all cases, free from encumbrances and encroachments from or on the Phase Parcel except for (a) the terms and conditions of this Agreement, (b) any Transportation Easements which affect the particular Phase Parcel and (c) the encumbrances, easements and restrictions which affect the particular Phase Parcel set forth in Exhibit D.

Section 207: Easements Necessary for Conveyance.

The MBTA shall grant to the BRA and any successor owner of said Phase Parcel or to any other designee of the BRA all easements and licenses required for construction and staging of a particular Phase Parcel and permanent easements and licenses for access, utilities and other matters reasonably required for the use and operation of the Improvements on any Phase Parcel,

encumbering the portions of the Property not yet conveyed, which easements shall contain customary language regarding rights of access, maintenance and indemnity.

Section 208: Federal Tax Stamps and Other Closing Costs.

The BRA shall pay the costs of recording any Deed and all other instruments and plans to be recorded together with any Deed and the MBTA shall pay the costs of any Federal or Commonwealth of Massachusetts documentary tax stamps which shall be required in connection therewith.

Section 209: Adjustments.

The MBTA shall pay all Operating Costs of all portions of the Property allocable with respect to any period before delivery and conveyance of the respective Phase Parcels from the MBTA to the BRA. "Operating Costs" as used herein shall refer to real estate taxes, water and sewer use charges and assessments, betterment assessments, insurance and any and all other charges and expenses related to the ownership and use of the Property.

ARTICLE III

IMPROVEMENTS AND SUBMISSION OF PLANS

Section 301: Improvements and Submission of Plans.

(a) The Development Review Procedures sets forth the formal stages of submissions and approvals for the Design Documentation relating to the Improvements for each Phase. The several stages

of review of the Design Documentation as defined in Exhibit A (which shall be applied separately to each Phase) are the Schematic Design, the Design Development, the Contract Documents (including Drawings and Specifications) and the Construction Inspection. Simultaneously with the submission by the Developer to the BRA of each stage of the Design Documentation for each Phase, the BRA shall submit copies thereof to the MBTA.

(b) The MBTA, acting through its General Manager or the Director of Real Estate Development as his designee, shall have the right to review the Schematic Plans as submitted by the BRA to determine, which determination shall not be unreasonably withheld, that the Schematic Plans for any Phase and the schedules for construction of the Improvements for the particular Phase do not have a material adverse effect upon (i) pedestrian, bus and automobile access to Ruggles Station, (ii) the Southwest Corridor bicycle path, or (iii) any Transportation Easements, and that provisions for appropriate protection of MBTA physical facilities and Transportation Easements, have been made during the proposed construction of such Phase. If the BRA receives no notification from the MBTA within fifteen (15) days after submission of the Schematic Plans to the MBTA, the MBTA shall be deemed to have determined that the Schematic Plans and schedules for construction of Improvements do not have such a material adverse effect. If the BRA receives notification from the MBTA within fifteen (15)

days after submission of the Schematic Plans to the MBTA that the Schematic Plans and schedules for construction of Improvements have a material adverse effect as defined above, which notification states the reasons for such material adverse effect with reasonably specificity, the BRA, MBTA and Developer shall confer to revise the Schematic Plans and schedules for construction of Improvements to eliminate or reduce such material adverse effect. If, in the reasonable judgment of the MBTA, the copies of the final Drawings and Specifications submitted to the MBTA by the BRA deviate in a material respect from the Schematic Plans and schedules for construction of Improvements submitted to the MBTA and such deviation has a material adverse effect on

- (i) pedestrian, bus or automobile access to Ruggles Station,
- (ii) the Southwest Corridor bicycle path or (iii) any Transportation Easements, the MBTA shall notify the BRA within fifteen (15) days after submission of the Drawings and Specifications to the MBTA. If the BRA receives no notification from the MBTA within fifteen (15) days after submission of the final Drawings and Specifications to the MBTA, the MBTA shall be deemed to have determined that the final Drawings and Specifications do not have such a material adverse effect. If the BRA receives notification from the MBTA within fifteen (15) days after submission of the final Drawings and Specifications to the MBTA that the final Drawings and Specifications have a material adverse effect as

defined above, which notification states the reasons for such material adverse effect with reasonably specificity, the BRA, MBTA and Developer shall confer to revise the final Drawings and Specifications to eliminate or reduce such material adverse effect.

Section 302: Amendments and Modifications.

The BRA shall not recommend an amendment to the Zoning Commission of the City of Boston of the PDA/DIP Master Plan or the PDA Development Plan for any Phase Parcel to permit the addition of any use, other than the Permitted PDA Uses, that may adversely affect the MBTA's use and enjoyment of Ruggles Station or the MBTA's transportation operations related thereto without the prior approval of the MBTA, acting through its General Manager or the Director of Real Estate Development as his designee, which shall not be unreasonably withheld. The BRA shall not permit the Developer to modify the Schematic Design for any Phase from the Schematic Design for such Phase permitted by the PDA Master Plan without the prior approval of the MBTA, acting through its General Manager or the Director of Real Estate Development as his designee, which approval shall not be unreasonably withheld, and which approval shall be required only if such modification would affect (i) adversely the cost to remove Hazardous Wastes as required under Section 203 or (ii) any Transportation Easement, and, in all other cases, no approval of the MBTA shall be

required. If the BRA receives no notification from the MBTA of disapproval within fifteen (15) days after written submission by the BRA to the MBTA requesting any such approval, the BRA's submission shall be deemed approved.

ARTICLE IV

RIGHTS, REMEDIES AND PROCEDURES IN THE EVENT OF A DEFAULT

Section 401: Default by the MBTA.

In the event that the MBTA shall be unable to give title or to make conveyance or to deliver possession of a Phase Parcel as provided herein, the MBTA shall use reasonable efforts (exclusive of efforts to remove Hazardous Wastes which effort shall be without limitation as to amount in accordance with the requirements of Section 203), to make conveyance or to deliver possession as herein agreed, as the case may be. The MBTA shall give written notice thereof to the BRA, as soon as the MBTA reasonably determines that it cannot convey or deliver possession to the particular Phase Parcel as herein agreed, but in no event later than sixty (60) days before the Closing Date in question, and thereupon the time for the performance by the MBTA shall be extended for a period of sixty (60) days, or such longer period as the MBTA and the BRA shall mutually agree; provided, however, that the BRA shall have the election, either at the original or any extended time for performance, to accept such title and possession

as the MBTA can deliver to the particular Phase Parcel and to pay therefor the purchase price, without deduction, in which case the MBTA shall convey such title. In the event that at the expiration of the extended time the MBTA shall be unable to make conveyance or to deliver possession as herein provided and the BRA elects not to accept such title, then, at the further election of the BRA, all obligations of the parties hereto shall cease and become null and void with respect to the particular Phase Parcel and the parties shall have no further recourse to each other hereunder as to the particular Phase Parcel or, at the election of the BRA, with respect to the Property in which event this Agreement shall cease and become null and void with respect to the Property not yet conveyed to the BRA and the parties shall have no further recourse to each other hereunder.

Section 402: Default by the BRA

In the event that prior to the conveyance of a particular Phase Parcel the BRA shall default in its obligations hereunder and shall be unable to correct such default within 180 days after written notice thereof (or within such extended period of time as the parties agree to) or, where cure requires more than 180 days, if the BRA does not promptly begin such cure and thereafter diligently prosecute the same to completion, then the MBTA may, at its election, by notice to the BRA given on or prior to the Closing Date (as the same may be extended hereunder) terminate the

rights of the BRA with respect to the particular Phase Parcel, and to any subsequent Phase Parcel, but the MBTA shall have no right and shall not be permitted, to terminate the rights of the BRA with respect to any Phase Parcel as to which the Closing Date shall have occurred prior to such notice of termination.

Section 403: Remedies for Other Defaults.

It is understood by the parties hereto that in the event any party shall fail to comply with or violate any of the provisions of this Agreement, then any other party hereto may institute such actions and proceedings as may be appropriate, including actions and proceedings to compel specific performance and payment of all damages, expenses and costs.

Section 404: Reimbursement in Respect of Certain Litigation.

Any party to this Agreement who shall be adjudged to be in violation of its obligations hereunder (a "Violating Party") shall pay all amounts of all judgments and decrees (including without limitation reasonable attorneys' fees) awarded to any other party hereto (a "Prevailing Party") in any proceedings brought to enforce the obligations of any party hereunder, as set forth in the provisions of this Agreement, but only in the event, and to the extent, that the Prevailing Party so prevails.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 501: Obligations and Rights and Remedies Cumulative and Separable.

The respective rights and remedies of the BRA and the MBTA provided by this Agreement or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies.

Section 502: Amendment.

This Agreement shall constitute the entire agreement among the parties hereto as to the subject matter hereof; it may be amended only by an instrument in writing signed by the BRA and the MBTA.

Section 503: Severability.

The provisions of this Agreement are severable, and if any such provision or the application of such provision shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions of this Agreement which shall remain in full force and effect.

Section 504: Time of Essence; Survival of Agreement.

Time is of the essence in the performance of this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them and shall diligently, promptly and punctually fulfill the conditions applicable to each of them.

The Agreements contained in Section __, Section __, Section __, and Section __ will survive the delivery of a Deed hereunder.

Section 505: MBTA Barred from Interest.

No member, official or employee of the MBTA or BRA shall have any personal interest direct or indirect, in this Agreement or the Developer, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly, interested. No member, official or employee of the MBTA shall be personally liable to the BRA or any successor in interest in the event of any default or breach by the MBTA for any amount which may become due to the BRA or to its successor or on any obligations under the terms of this Agreement. No member, official or employee of the BRA shall be personally liable to the MBTA or any successor in interest in the event of any default or breach by the

BRA for any amount which may become due to the MBTA or to its successor or on any obligations under the terms of this Agreement.

Section 506: Approvals and Notices.

Where provisions of any agreement between the BRA and the Developer require that notices, consents, approvals, authorizations, certifications, reviews and the like are required to be given to the MBTA or received from the MBTA and the Developer has been notified in writing by the BRA that the same is approved or is satisfactory, such determination shall be conclusively deemed to be a final determination by the BRA and the MBTA with respect to such particular document or proposed action for which such approval or notice of satisfaction was given, and such notification from the BRA may be relied upon by the Developer and any third party.

Where the consent or approval of the BRA or MBTA is required under this Agreement, such consent or approval shall not be unreasonably withheld, but the same shall be valid and binding only if given in a writing which is signed by a duly authorized official, provided however that whenever this Agreement requires that an approval or disapproval be given within a specified time period, a failure to approve or disapprove within said period shall be deemed a valid and binding approval thereof, but only if requirements hereof of the notice and request for approval have been complied with. Any reference in this Agreement to the number

of days within which any action must be taken by any party hereto shall mean: (i) business days when the number of days is 30 or less and (ii) calendar days when the number of days is more than 30.

Notices hereunder shall be deemed given when deposited in the United States mail and sent registered or certified mail, postage prepaid, to the principal office of the party to whom it is directed, which is initially as follows:

BRA: Boston Redevelopment Authority
City Hall Square
Boston, MA 02201
Attn: Director

with a copy to: Boston Redevelopment Authority
City Hall Square
Boston, MA 02201
Attn: Chief General Counsel

MBTA: Massachusetts Bay Transportation
Authority
Transportation Building, ____ Floor
Boston, MA []
Attn: General Manager

with a copy to: Massachusetts Bay Transportation
Authority
Transportation Building, ____ Floor
Boston, MA []
Attn: General Counsel

The parties shall promptly notify each other of any change of their respective addresses set forth above. Any requests for approvals made by the BRA where such approvals shall be deemed granted after a period of non-reply shall, as a condition to the

effectiveness thereof, be prefaced with the following language printed in capital letters in boldface type:

NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY; FAILURE TO RESPOND WITHIN ____ DAYS SHALL RESULT IN AUTOMATIC APPROVAL.

Section 507: T-Pass. As a condition of PDA approval of any Phase, the BRA shall include as a condition of such PDA approval that the Developer shall include provisions in its space leases to tenants of buildings located on the Phase requiring tenants to inform employees about the "T Pass" programs and encouraging, but not requiring, their use.

Section 508: Matters to be Disregarded.

The index to and titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 509: Obligations to Continue.

Except as to obligations expressly or by clear implication required to be performed at or prior to the time of Closing of the sale and conveyance of title to and delivery of possession of a particular Phase Parcel, the provisions of this Agreement and each of the Exhibits, except as otherwise expressly provided therein,

shall survive the time of Closing and the sale and conveyance of title to the Phase Parcel to the BRA.

Section 510: Excusable Delays.

For the purposes of any of the provisions of this Agreement, neither the MBTA nor the BRA, as the case may be, shall be considered in default of its obligations hereunder in the event of unavoidable delay in the performance of such obligations if due to causes beyond its control and not due to its fault or negligence, including but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, or other casualties, epidemics, quarantine restrictions, labor disputes, litigation, freight embargoes, and unusually severe weather or delays of contractors and subcontractors due to such causes; it is the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such party shall be extended for the period of the enforced delay, provided, that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other party thereof in writing stating the cause or causes thereof and requested an extension for the period of the enforced delay. In calculating the length of the delay, as the BRA and the MBTA shall consider

not only actual work stoppages but also any consequential delays resulting from such stoppages as well.

Section 511: Agreement Binding on Successors and Assigns.

The respective provisions of this Agreement, in accordance with their terms, shall be binding upon, and shall inure to the benefit of any public body succeeding to the interests of the MBTA or the BRA.

Section 512: Separation of Obligations and Liabilities Regarding Each Phase Parcel and Construction of Exhibits.

Notwithstanding anything else to the contrary herein or in the Exhibits contained herewith, each and every obligation, covenant, responsibility and liability of the MBTA and the BRA set forth in this Agreement, and in each of the Exhibits shall, as relevant, apply separately to each Phase Parcel, and a default with respect to a particular Phase Parcel under any paragraph or provision of this Agreement or the Exhibits shall not constitute a default with respect to any other Phase Parcel which has been purchased by the BRA prior to the occurrence of such default.

Section 513: Waivers.

Any right or remedy which the MBTA or the BRA may have under this Agreement, or any of the provisions, may be waived in writing, without execution of a new or supplementary Agreement, but any such waiver shall not affect any other rights not

specifically waived. The MBTA or the BRA, in writing, may waive any provisions herein contained for its or their benefit.

Section 514: Sole Obligation of BRA and the MBTA.

The sole obligation of the BRA and the MBTA hereunder shall be timely to perform their respective duties set forth hereunder with respect to (i) approvals required of them, (ii) the performance of the covenants and obligations required of them, (iii) conveyance of the Property or Phase Parcels, (iv) removal of the Hazardous Wastes from the Property and (v) any Conditions required of them. The MBTA shall, however, fully cooperate with and publicly support the BRA and the Developer in reasonable efforts to obtain all permits, approvals and licenses from all governmental authorities of the City of Boston and Commonwealth of Massachusetts; provided however, that the MBTA does not guaranty the issuance of any such approvals; it being agreed that any obligations of the Developer set forth in the Sale and Construction Agreement are expressly conditioned upon the active cooperation and public support by the MBTA of the Developer's efforts to obtain from the appropriate municipal and state bodies and agencies all such permits, approvals, and licenses which may be necessary or desirable in order to carry out the development of the Property in accordance with the PDA/DIP Master Plan.

Section 515: Other Agreements.

The parties hereto agree to duly, diligently and in good faith cooperate with each other in the seeking of any governmental or other public approvals required in connection with this Agreement, the Sale and Construction Agreement or the development of the Property. Further, the parties acknowledge the importance to the success of the development of the Property of accomplishing a timely and successful development of the Phase One Phase Parcels and the likelihood that in all probability there will arise the need for certain other agreements to facilitate the development of the Phase One Phase Parcels and the sale and development of the Property, or part thereof, provided herein. Accordingly, the parties hereto agree to use all reasonable efforts to negotiate and execute such further agreements as may be necessary or useful for such purpose. Approval and execution of any such further agreements on behalf of the MBTA will be by the General Manager or the Director of Real Estate Development as his designee.

Section 516: Estoppel Certificate.

The MBTA agrees, upon fifteen (15) days' prior written request by the BRA, to execute, acknowledge and deliver to the BRA a statement in writing certifying that this Agreement is unmodified and in full force and effect and that there are no uncured defaults under this Agreement (or, if there have been any modifications, that this Agreement is in full force and effect as

modified and stating the modifications and, if there are any defaults, setting them forth in reasonable detail.) Any such statement delivered pursuant to this Section 516 shall be in a form reasonably acceptable to and may be relied upon by the BRA, the Developer and any mortgagee. The failure to respond to such a request within fifteen (15) days after receipt thereof shall be deemed to constitute a certification that this Agreement is in full force and effect and there are no uncured defaults.

Section 517: Superseding Agreement.

This Agreement supersedes all other agreements between the parties, whether oral or written, including without limitation the Development Agreement dated April 27, 1989.

Section 518: Termination.

If, for any reason, the Closing Dates for all of the Phase Parcels comprising the Property have not occurred on or before [], this Agreement and all rights and obligations of the parties hereto except with respect to those Phase Parcels which have been conveyed to the BRA prior thereto, shall terminate and be null and void, such that from and after any such termination date, this Agreement and the rights and obligations of the parties hereto shall apply only to those Phase Parcels which have been so conveyed to the BRA prior to such termination date. After the occurrence of any such termination date, upon notice by any party or any mortgagee thereof (the "Requesting Party") requesting the

other party hereto (the "Responding Party") to provide an instrument suitable for recording acknowledging the termination of this Agreement in accordance with this Section 518, the Responding Party shall provide such an instrument to the Requesting Party, which instrument, when executed by both parties thereto and recorded with the Suffolk Registry of Deeds, shall conclusively establish the termination of this Agreement in accordance with this Section 518 except as to those Phase Parcels which have been conveyed to the BRA prior thereto. Upon the failure of the Responding Party to supply such instrument within fifteen days of notice of such request, the Requesting Party may record an affidavit with said Deeds attesting to the termination of this Agreement which, upon recording with said Deeds, shall conclusively establish the termination of this Agreement in accordance with this Section 518 except as to those Phase Parcels which have been conveyed to the BRA prior thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement in _____ counterparts to be signed, sealed and delivered by their duly authorized officers or representatives, respectively as of the day and year first above written.

APPROVED AS TO FORM:

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Chief General Counsel
Boston Redevelopment
Authority

By: _____
Director

Date of execution:

APPROVED AS TO FORM:

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY

General Counsel

By: _____
General Manager

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston

, 1989

Then personally appeared before me the above-named
Stephen Coyle, Director of the Boston Redevelopment Authority, who
executed the foregoing Agreement on behalf of the Boston
Redevelopment Authority and acknowledged the same to be the free
act and deed of said BRA.

Before me,

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston

, 1989

Then personally appeared before me the above-named
_____, General Manager of the Massachusetts Bay
Transportation Authority, who executed the foregoing Agreement on
behalf of the Massachusetts Bay Transportation Authority and
acknowledged the same to be the free act and deed of said
Authority.

Before me,

Notary Public

My commission expires:

SALE AND CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 1989, among the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "Authority"), and RUGGLES CENTER JOINT VENTURE, a general partnership organized under the laws of Massachusetts ("Developer"), c/o Metropolitan/Columbia Plaza Venture, 125 Summer Street, Boston, Massachusetts, its successors and assigns.

The parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 101: Defined Terms.

For the purpose of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

a. "Architect" shall mean the firm of Stull & Lee, Inc. or such other firm as shall be substituted or selected for each particular Phase by the Developer with the prior written consent of the Authority, which consent shall not be unreasonably withheld.

b. "Authority" shall mean the Boston Redevelopment Authority.

c. "Certificate of Completion" shall mean the instrument or certification so entitled to be issued by the Authority pursuant to Section 304 of this Agreement for each Phase.

d. "Change Order" shall mean any request by the Developer for approval by the Authority, together (where appropriate in the context of this Agreement) with such approval, of a change to or modification or amendment of the Drawings and Specifications or of the completed Improvements, if the same would exceed \$100,000 in value or if the same would or might change the external appearance of the Improvements or any elements thereof which are open to public view including, without limitation, elements such as public lobbies, arcades, open spaces or landscaping.

e. "City" shall mean the City of Boston, Massachusetts.

f. "Closing" shall mean the consummation of the sale and conveyance of a particular Phase Parcel to the Developer on the Closing Date for such Phase Parcel and the performance by the parties hereto of their respective obligations in connection therewith as contemplated by the terms of this Agreement.

g. "Closing Date" shall mean the date established in Section 205 of this Agreement as the date for the sale and conveyance of a particular Phase Parcel to the Developer as the same may be extended in accordance with the terms of Article II of this Agreement.

h. "Condition Date" shall mean the date on which all of the Conditions have been satisfied with respect to a particular Phase.

Notwithstanding any other provision of this Agreement, in the event the Closing Date occurs prior to the Condition Date for a particular Phase, the Condition Date shall survive the Closing Date for such Phase.

i. "Conditions" shall mean the following conditions precedent to the obligation of the Authority to sell and the Developer to purchase any Phase Parcel (including in each case, as applicable, the expiration of all applicable appeal periods, it being understood and agreed by the parties that no Condition shall be deemed satisfied until the expiration of all the applicable appeal periods without an appeal having been filed, or if an appeal has been filed, the entry of a final judgment upholding the satisfaction of the Condition from which no further appeal may be taken):

(i) the Conditions to be satisfied prior to the obligation of the Authority to sell and the Developer to purchase any Phase Parcel shall be the following:

(a) The Property shall have been designated a Planned Development Area by the Zoning Commission upon recommendation by the Authority pursuant to Section 3-1A of the Boston Zoning Code, as amended from time to time, ("Code") which designation shall authorize exceptions pursuant to Section 6A-1 of the Code from any provisions of the Code as may be required for each Phase Parcel. The PDA/DIP Master Plan (as hereinafter defined) which shall have been approved by the Authority shall

permit the development and construction of not less than 1,220,000 square feet of gross floor area inclusive of above-grade level parking for the Property, not less than 1040 total parking spaces for the Property (including not less than 690 above-grade parking spaces for the Property), and shall permit, without reservation, the Permitted PDA Uses and other similar uses and uses incidental or accessory to the foregoing. The PDA/DIP Master Plan conforming to the requirements hereof and approved by the Authority on June 29, 1989 is attached hereto as Exhibit A.

(b) The Zoning Commission shall have designated the Property a Planned Development Area pursuant to Section 3-1A of the Code and shall have approved the PDA/DIP Master Plan submitted by Developer for the Property and the Mayor of the City shall have approved such rezoning, or, in the event the Mayor fails to act within fifteen (15) days after receipt of the rezoning, such rezoning shall have been deemed to have been approved, all in accordance with Section 3 of Chapter 665 of the Acts of 1956. The Zoning Commission and the Mayor approved said rezoning on September 11, 1989 and September 13, 1989, respectively.

(c) The Authority shall have granted final designation of the Developer as redeveloper of the Property and have recommended to the MBTA the final designation of the Developer as redeveloper of the Property and the MBTA shall have granted such final designation.

(d) The Massachusetts Secretary of Environmental Affairs shall have issued a Certificate that the Final Environmental Impact Report required by the Secretary in accordance with his Certificate on Environmental Notification Form pertaining to the Property or one or more Phase Parcels does adequately and properly comply with the Massachusetts Environmental Policy Act, M.G.L. Ch. 30, § 62-62H inclusive ("MEPA"), and with the regulations implementing MEPA.

(e) The MBTA and the Authority shall have entered into the MBTA Purchase Agreement pursuant to which the MBTA agrees to sell and the Authority agrees to purchase the Property, on terms reasonably acceptable to the Authority and the Developer, and, pursuant to said agreement, the MBTA shall have recorded with Suffolk Deeds a consolidation plan of land whereby the land included in the Property is consolidated into the six parcels as shown on the Property Plan.

(f) The Authority or the City shall have purchased the Public Plaza Phase Parcel simultaneously, or prior, to the purchase by the Developer of the first Phase Parcel, the City shall have appropriated and have available funds, in the amount of not less than \$2,050,000, required to pay for the construction of the Public Improvements on the Public Plaza Phase Parcel, and the City shall have entered into an agreement with the Authority whereby the City shall transfer said funds to the Authority.

(g) The Authority and the Developer shall have entered into the DIP Agreement which is in a form acceptable to the Authority and the Developer. The DIP Agreement conforming to the requirements hereof was entered into by the Authority and the Developer on August 23, 1989 and is attached hereto as Exhibit B.

(h) The Authority and the Developer shall have entered into the PDA Cooperation Agreement which is in a form acceptable to the Authority and the Developer. The PDA Cooperation Agreement conforming to the requirements hereof was entered into by the Authority and the Developer, as approved by the Authority, on September 11th, 1989 and is attached hereto as Exhibit C.

(ii) in addition to the Conditions set forth in subsection (i), the Conditions to be satisfied prior to the obligation of the Authority to sell and the Developer to purchase a particular Phase Parcel shall be the following:

(a) If, and to the extent, applicable, the Authority and the Zoning Commission shall have approved all amendments to the PDA/DIP Master Plan, necessary to permit development of the particular Phase Parcel to proceed.

(b) The Authority and the Zoning Commission shall have approved a PDA Development Plan for development of the particular Phase Parcel.

(c) The Authority shall have approved all the Drawings and Specifications for construction of the Improvements

on the particular Phase Parcel, and, if, and to the extent, applicable, the Authority and the Developer shall have entered into amendments to the PDA Cooperation Agreement and the DIP Agreement.

(d) If, and to the extent, applicable, the Board of Appeal of the City shall have granted all of the relief requested in the Developer's application or applications to the Board of Appeal in connection with a particular Phase Parcel for (i) an Interim Planning Permit pursuant to Sections 27-3 and 27E-27 of the Code, (ii) exceptions from the Code pursuant to Section 6A-1 of the Code, (iii) conditional use permits pursuant to Section 6-1 of the Code, and (iv) variances from the State Building Code.

(e) If, and to the extent, applicable, the Boston Civic Design Commission shall have approved, or shall be deemed to have approved pursuant to Section 28 of the Code, the Developer's schematic plans for the particular Phase Parcel.

(f) The Boston Transportation Department and the Developer shall have entered into a Transportation Access Plan Agreement, a Transportation Maintenance Agreement and any other agreement required by the Boston Transportation Department for the particular Phase Parcel.

(g) The Developer shall have executed a Boston Residents Construction Employment Plan, a Memorandum of Understanding setting forth an Equal Opportunity Plan and a First

Source Agreement, all in forms acceptable to the Office of Jobs and Community Services of the City and the Developer for the particular Phase Parcel.

(h) If, and to the extent, applicable, Developer shall have obtained from the Boston Committee on Licenses, a division of the Public Safety Commission, permits to erect and maintain a parking garage for the particular Phase Parcel.

(i) The Massachusetts Water Resources Authority or any successor thereto shall have issued a Sewer Connection Permit under M.G.L. c. 92 Appendix § 1-1 et seq., and regulations promulgated thereunder for the particular Phase.

(j) If, and to the extent applicable, the procedures set forth in M.G.L. Ch. 9, § 26 and the regulations promulgated thereunder at 950 C.M.R. 71.00 et seq. with respect to the Massachusetts Historical Commission ("MHC") shall have been complied with so that the Developer may proceed with the particular Phase without further review or approval by MHC.

(k) The MBTA, acting through its General Manager or his designee, shall have determined, which determination shall not be unreasonably withheld, that the Schematic Design and the schedules for construction of the Improvements on the particular Phase Parcel do not have a material adverse effect upon

(I) pedestrian, bus and automobile access to Ruggles Station,

(II) the Southwest Corridor bicycle path, or (III) any Transportation Easements, and that provisions for appropriate

protection of MBTA physical facilities and Transportation Easements, have been made during the proposed construction of such Phase Parcel.

(l) The MBTA shall have removed or otherwise disposed of all Hazardous Wastes located on the particular Phase Parcel to the extent required by the Hazardous Waste Regulations in accordance with the MBTA Purchase Agreement.

(m) The Developer shall have obtained any and all other applicable federal, state, or local permits, approvals, licenses, certifications, designations, agreements, variances or exceptions necessary to construct and occupy the particular Phase.

(n) There shall be no lawsuit or other legal action pending in any trial court or appellate court or threatened against the Developer, the Authority or any other governmental authority which, if adversely decided, could have a material adverse effect upon the ability of the Developer to construct and occupy the particular Phase.

(o) The Developer shall have furnished evidence satisfactory to the Authority that the Developer has the equity capital and commitments for mortgage financing adequate for the construction of the Improvements for the particular Phase.

j. "Construction Commencement Date" shall mean as to each Phase no later than six (6) months after the later of the Closing Date or the Condition Date for the particular Phase Parcel. If and to the extent that, from time to time, Developer demonstrates

that it is unable, for reasons beyond its control (which may include, without limitation, strikes or unforeseen construction delays, unfavorable leasing markets (provided the Developer can demonstrate to the Authority that after diligent efforts, the Developer has been unable to obtain leasing commitments from creditworthy tenants in amounts sufficient to justify commencement of construction of such Phase, litigation or inability to obtain governmental approvals, permits, licenses, variances, exceptions, and the like) to begin construction on or before the applicable Construction Commencement Date, the Authority shall, from time to time, extend the Construction Commencement Date in question for a period which is reasonable under the circumstances, but, in any event, not to exceed a total of thirty-four (34) months, unless the Authority reasonably determines the Developer would, at such extended date, lack the capacity to commence the construction in question or to prosecute such construction to completion.

k. "Contractor" shall mean such general contractor or construction manager for a particular Phase as may be selected by the Developer with the prior written consent, which shall not be unreasonably withheld, of the Authority upon submission to the Authority of reasonable evidence that such contractor is capable of undertaking the work for such Phase.

l. "Covenant Expiration Date" shall mean the date, ascertained separately for each Phase Parcel, which date is the

twentieth anniversary of the date of the Certificate of Completion for the particular Phase.

m. "Deed" shall mean, in the case of a sale of any Phase Parcel, the instrument to be recorded in the Suffolk County Registry of Deeds in Boston, Massachusetts, whereby the Authority conveys such Phase Parcel to the Developer.

n. "Design Documentation" shall mean the several stages of documentation which are set forth in the Development Review Procedures and which are to be prepared for the Developer by or through the Architect and which are to be submitted to the Authority for approval for each Phase pursuant to the Development Review Procedures.

o. "Developer" shall mean Ruggles Center Joint Venture, a general partnership organized under the laws of the Commonwealth of Massachusetts ("RUGGLES") with Metropolitan Structures ("Metropolitan"), Columbia Plaza Associates ("Columbia") and Metropolitan/Columbia Plaza Venture ("Metropolitan/Columbia") as general partners and having a place of business of c/o Metropolitan/Columbia Plaza Venture, 125 Summer Street, Boston, Massachusetts, and any affiliated entity thereof designated by RUGGLES to develop a particular Phase Parcel so long as the legal ownership of such affiliated entity is identical to that of RUGGLES (and, where appropriate in the context in this Agreement, Developer shall mean collectively RUGGLES and the affiliated entity or entities designated by RUGGLES to develop

all of the Phase Parcels) and shall include any successors in interest or assigns thereof, whether by act of a party pursuant to this Agreement or by operation of law or otherwise.

p. "Development Review Procedures" shall mean the procedures set forth in Exhibit D attached hereto and made a part hereof, to be followed by the Developer in obtaining all approvals required hereunder of the Design Documentation for each Phase.

q. "DIP Agreement" shall mean the Development Impact Agreement between the Developer and the Authority, dated August 23, 1989 which is referred to in Section 101(i)(i)(g) of this Agreement, as the same may be amended from time to time, which sets forth the Developer's responsibility with respect to the Property for a Development Impact Project Contribution pursuant to Section 26A-3 of the Code, and for a Jobs Contribution Grant pursuant to Section 26B-3 of the Code.

r. "Drawings and Specifications" shall mean the architectural and engineering drawings and specifications to be included in the Contract Documents of the Development Review Procedures.

s. "Event of Default" shall mean the happening of one or more of the matters described as such in Section 901 of this Agreement with respect to a particular Phase; it being agreed that an Event of Default as to a particular Phase shall not affect any other Phase which has been purchased by the Developer prior to the occurrence of said Event of Default.

t. "Final Designation" shall mean the vote of the Authority in which a final designation shall be made of the Developer as the prospective purchaser and developer of the Property.

u. "Hazardous Wastes" shall mean "oil", "chemical substance or mixture", "hazardous wastes", "toxic substances", "hazardous substances" and "hazardous materials" as defined in the Comprehensive Environmental Response and Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et. seq. ("CERCLA"); the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq. ("RCRA"); Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499 (signed into law October 17, 1986) ("SARA"); Toxic Substance Control Act ("TSCA"); Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E; Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et. seq.; or any other state, federal, superlien or environmental clean-up or disclosure statutes now or hereinafter enacted and all regulations promulgated under any of the foregoing statutes (the "Hazardous Waste Regulations").

v. "Improvements" shall mean all structures and amenities to be constructed by the Developer with respect to each particular Phase, pursuant to the approved Design Documentation and any Change Order(s) and the PDA Development Plan for such Phase, as the same may be amended.

w. "Instruments" shall mean all of the instruments attached hereto as Exhibits, as they may be amended from time to time. [DISCUSS: Be sure we have a comprehensive list of all Instruments.]

x. "Master Plan Area" shall mean the land consisting of approximately 5.10 acres which includes the Property, the streets and sidewalks and the landscaped open areas shown on the Property Plan.

y. "MBTA" shall mean the Massachusetts Bay Transportation Authority.

y-1. "MBTA Purchase Agreement" shall mean the purchase and sale agreement dated _____, 1990 by and between the MBTA and the Authority pursuant to which the MBTA agrees to sell and the Authority agrees to purchase the Property in accordance with the terms thereof.

z. "MBTA Vote" shall mean the votes of the MBTA Board of Directors on _____, 1990 to approve the sale of the Property to the Authority pursuant to the MBTA Purchase Agreement.

aa. "Permitted PDA Uses" shall mean the uses designated and permitted by the PDA Development Plan for a particular Phase, as the same may be amended from time to time.

bb. "Phase" shall mean a particular Phase Parcel, as designated by the Developer and approved by the Authority, pursuant to Section 202 of this Agreement, and the Improvements and, if applicable, Public Improvements to be constructed thereon.

cc. "Phase Parcel" shall mean that area of the Property that is designated by the Developer, and approved by the Authority, as a particular Phase Parcel pursuant to Section 202 of this Agreement and on which Improvements and, if applicable, Public Improvements for such Phase will be constructed.

dd. "PDA Cooperation Agreement" shall mean the Cooperation Agreement, dated September 11, 1989, which is referred to in Section 101(i)(i)(h) of this Agreement between the Developer and the Authority which sets forth certain agreements between the Developer and the Authority, as the same may be amended from time to time.

ee. "PDA Development Plan" shall mean the Development Plan with respect to a particular Phase Parcel, which is referred to in Section 101(i)(ii)(b) of this Agreement, as the same may be amended from time to time, which must be submitted to and approved by the Authority and the Zoning Commission prior to undertaking any work in a Planned Development Area pursuant to Section 3-1A.a of the Code.

ff. "PDA/DIP Master Plan" shall mean the Planned Development Area Master Plan and Development Impact Project Plan submitted to and approved by the Authority and the Zoning Commission on June 29, 1989 and September 11, 1989, respectively, with respect to a Planned Development Area of greater than five (5) acres pursuant to Sections 3-1A.a and 26A-3 of the Code, which is

referred to in Section 101(i)(i)(a) as said PDA/DIP Master Plan may be amended from time to time.

gg. [REVIEW] "Property" shall mean the land situated in Boston, Massachusetts shown as "Phase Parcels 18-1A, 18-1B, 18-2, 18-3A, and 18-3B shown on [Sheet 1] of the Property Plan, which property is subject to the easements and encumbrances shown on Sheet 3 of the Property Plan.

hh. "Property Plan" shall mean the plan entitled "Ruggles Center/Parcel 18, Plan of Land in Boston, Massachusetts, Roxbury District, Suffolk County", prepared by Survey Engineers of Boston dated _____, 1989 and attached hereto as Exhibit E.

ii. "Public Plaza Improvements" shall mean the structures and amenities to be caused to be constructed by the Authority on the Public Plaza Phase Parcel pursuant to Article IIA of this Agreement.

jj. [REVIEW] "Public Plaza Phase Parcel" shall mean the parcel shown as Public Plaza Phase Parcel on Sheet 1 of the Property Plan.

kk. "State" shall mean the Commonwealth of Massachusetts.

ll. "Schematic Design" shall mean the preliminary design concept and plans for the proposed Improvements for a particular Phase Parcel which shall be prepared in accordance with the Development Review Procedures.

mm. "Tentative Designation" shall mean the vote of the Authority taken at a meeting held on March 10, 1988 in which a

tentative designation was made of Metropolitan/Columbia Plaza Venture, whose partners are the sole partners of the Developer, as the prospective purchaser and redeveloper of the Property, the same being set forth at length in a certificate of Kane Simonian, Secretary of the Authority, a copy of which is attached hereto as Exhibit F and made a part hereof.

nn. "Transportation Easements" shall mean the easements reserved by the MBTA for present and future transportation needs which shall encumber the Property and are set forth on Sheet 2 of the Property Plan.

oo. "Zoning Commission" shall mean the Zoning Commission of the City.

ARTICLE II

TRANSFER OF THE PROPERTY AND PAYMENT THEREFOR

Section 201: Agreement to Sell.

Subject to all of the terms, covenants and conditions of this Agreement, the Authority agrees to sell and the Developer covenants and agrees to purchase the Property or such Phase Parcels thereof as are designated by the Developer and approved by the Authority hereunder all upon such terms as are set forth herein.

Section 202: Designation of Phase Parcels.

The Developer shall develop the Phase Parcels according to the PDA/DIP Master Plan and the applicable PDA Development Plan, as they may be amended from time to time. Subject to the approval

of the Authority and the Zoning Commission, the Developer shall designate in the PDA/DIP Master Plan, and modify in the PDA/DIP Master Plan from time to time, thereafter, the number of Phase Parcels and the respective location, boundaries and area of each such Phase Parcel within the Property. Subject to the approval of the Authority and compliance with the Development Review Procedures, the Developer shall also be permitted to designate, and to modify from time to time, thereafter, the design, location, density and dimensions of the Improvements and the use thereof for each Phase Parcel, so long as said design, location, density, dimensions and use are permitted under the PDA/DIP Master Plan and the PDA Development Plan for such Phase Parcel, as they may be amended from time to time. Subject to the approval of the Authority, the Developer shall also be permitted to designate itself or any affiliate thereof as the Developer to develop such Phase Parcel in accordance with the terms hereunder.

From time to time, the Developer shall inform the Authority by written notice of its desire to develop and purchase a particular Phase Parcel (the "Phase Designation Notice"). Thereafter, the Developer, with the cooperation of the Authority, shall proceed in good faith and with all reasonable efforts to satisfy each of the conditions, which are within the reasonable control of the Developer, applicable to the particular Phase Parcel, including without limitation the preparation and submission of a PDA Development Plan. After approval by the

Authority and the Zoning Commission of a PDA Development Plan for the particular Phase Parcel, the Authority and the Developer shall confer and establish by written agreement a closing date for the particular Phase Parcel, which will be not earlier than 60 days nor later than 180 days from the date of such approval (the "Designated Closing Date").

In accordance with the terms of the Master Plan, as the same may be amended and approved by the Authority and Zoning Commission, the Developer shall be permitted to designate the Phase Parcels for development and purchase in such sequence and in accordance with such schedule as the Developer shall determine; provided, however if (i) the Developer fails to deliver a Phase Designation Notice for the first Phase Parcel on or before December 31, 1991 or (ii) the Developer fails to deliver a Phase Designation Notice for any subsequent Phase Parcel on or before three (3) years from the date of issuance of a Certificate of Completion by the Authority for the construction of the Improvements on the Phase Parcel then most recently purchased by the Developer or (iii) the Developer fails to deliver Phase Designation Notices for all of the Phase Parcels on or before December 31, 1996, then, as its sole remedy, the Authority may, at its election, by notice to the Developer terminate the rights of the Developer with respect to all Phase Parcels not yet conveyed to the Developer (the "Unconveyed Phase Parcels"). Upon the giving of such notice of termination by the Authority, this

Agreement shall terminate and be null and void with respect to the Unconveyed Phase Parcels and neither Developer nor the Authority shall have any further rights, obligations or recourse hereunder with respect to the Unconveyed Phase Parcels.

Section 203: Condition of Property to be Conveyed.

As a condition precedent to the purchase of each Phase Parcel by the Developer, the Authority shall cause the MBTA, pursuant to the MBTA Purchase Agreement, to remove or otherwise dispose of all Hazardous Wastes on the Phase Parcel in compliance with the Hazardous Waste Regulations. In connection therewith, the MBTA will deliver to the Developer a certificate or other appropriate statement from Haley & Aldrich, Inc. in form and substance reasonably acceptable to the Developer that all Hazardous Wastes on the Phase Parcel have been removed or otherwise disposed of to the extent required by the Hazardous Waste Regulations and that such Hazardous Wastes located on the Phase Parcel, if any, have been removed or otherwise disposed of in accordance with the Hazardous Waste Regulations. Between the date of this Agreement and the Closing Date for the last Phase Parcel, the Authority and the MBTA shall not use the Property for any purpose and shall keep all portions of the Property not yet conveyed to the Developer in the same condition as of the date hereof, free of all structures and improvements and free of all licensees, tenants or occupants. The Authority and the MBTA shall not mortgage, pledge or otherwise hypothecate or burden the Property and shall not, without the

prior written approval of the Developer, grant any easements, encumber the Property or otherwise restrict the Property. On the applicable Closing Date, the particular Phase Parcel to be conveyed shall be free of all structures and improvements and free of all licensees, tenants or occupants free of all encumbrances, and free of all Hazardous Wastes.

Until conveyance to the Developer, the Developer shall not have any legal responsibility for any portion of the Property not yet conveyed to the Developer, including without limitation, the responsibility to repair and maintain the same or the responsibility for any injury to persons or property thereon.

Section 204: Purchase Price.

The agreed purchase price for each Phase Parcel shall be Ten (\$10.00) Dollars per square foot of land as contained therein. In addition to the payment of the purchase price, if, with the consent of the Developer, the Authority shall have acquired title to a Phase Parcel prior to the conveyance of such Phase Parcel to the Developer, Developer shall reimburse the Authority for all costs and expenses incurred by the Authority in connection with the ownership of such Phase Parcel during the period from the date the Authority acquired title to such Phase Parcel until the date of purchase thereof by the Developer. If on the Closing Date for a particular Phase Parcel, the MBTA has failed to remove or otherwise disposed of all Hazardous Wastes as required in Section 203 of this Agreement and the Developer elects to purchase a

particular Phase Parcel which contains Hazardous Wastes, the Developer shall have the right to deduct from the purchase price for such Phase Parcel or for any other Phase Parcel conveyed to the Developer subsequent to such Phase Parcel the amount reasonably determined to be the cost to remove or otherwise dispose of such Hazardous Wastes located on the particular Phase Parcel as evidenced by written estimates or requests for payment prepared by independent third party contractors and submitted by the Developer to the Authority. [If the actual cost to remove such Hazardous Wastes for a particular Phase Parcel exceeds the amount deducted from the purchase price, the Authority shall remit the difference promptly to the Developer (up to an amount not to exceed the purchase price); if the actual cost to remove such Hazardous Wastes for a particular Phase Parcel is less than the amount so deducted from the purchase price, the Developer shall pay the difference promptly to the Authority.]

Section 205: Time of Sale.

The sale and delivery of possession of each Phase Parcel shall take place on the Closing Date, at the offices of the Authority, City Hall, Boston, MA, or at such other place as the parties may designate. The "Closing Date" for each Phase Parcel shall be the later to occur of (i) the Designated Closing Date for the Phase Parcel agreed upon by the Authority and the Developer pursuant to Section 202 of this Agreement or (ii) the Condition Date for the Phase Parcel.

If the Developer elects to purchase the Phase Parcel on or before the Condition Date, despite the nonsatisfaction of any Conditions precedent to its obligation to purchase which conditions have not been satisfied as of the Closing, the Authority shall cooperate with the Developer to the fullest extent possible to secure the satisfaction of any remaining Conditions in accordance with the Project as then contemplated and approved, but failure of such satisfaction to occur shall not relieve the Developer of its obligations hereunder, except that the Developer shall be relieved of its obligations hereunder to the extent that any such failure delays the construction of the Improvements as described in Section 301(a) hereof only until such approvals are obtained.

Notwithstanding anything to the contrary stated in this Agreement, with respect to each Phase Parcel as to which the Developer has delivered a Phase Designation Notice, if the Developer has not purchased the Phase Parcel and if the Condition Date for the Phase Parcel has not occurred by one (1) year after the Designated Closing Date (the "Outside Condition Date"), then if at least 30 days prior the Outside Condition Date, the Developer shall have advised the Authority or the Authority shall have advised the Developer of which of the Conditions are outstanding, either party may, on or after the Outside Condition Date, elect, by written notice to the other, that this Agreement shall terminate with respect to the particular Phase Parcel or to

all Phase Parcels not previously purchased by the Developer (the "Unconveyed Phase Parcels") whereupon this Agreement shall be null and void with respect to the particular Phase Parcel or to all Unconveyed Phase Parcels (as the case may be) and neither Developer nor the Authority shall have any further rights, obligations or recourse hereunder with respect to the particular Phase Parcel or to all Unconveyed Phase Parcels (as the case may be).

Section 206: Title and Instrument of Conveyance.

If the Developer purchases any Phase Parcel, the same shall be conveyed by a good and sufficient Quitclaim Deed running to the Developer or to such grantee as the Developer may designate by notice to the Authority subject to the approval of the Authority, if such approval is required pursuant to the provisions of Article V hereof, which notice shall be given at least ten (10) days before the Deed is to be delivered as herein provided. The Deed to each Phase Parcel shall convey a good and clear record and marketable fee simple title thereto, free from encumbrances and encroachments from or on the Phase Parcel except for (a) the terms and conditions of this Agreement, (b) any Transportation Easements which affect the particular Phase Parcel and (c) the encumbrances, easements and restrictions which affect the particular Phase Parcel set forth in Exhibit E.

At the option of any party hereto this Agreement may be recorded at the Suffolk Registry of Deeds at any time after the

execution hereof but, in any event, this Agreement shall be recorded with the Suffolk Registry of Deeds immediately prior to the Deed conveying the first Phase Parcel purchased hereunder to the Developer.

Section 207: Easements Necessary for Conveyance.

The Authority and the MBTA, pursuant to the MBTA Purchase Agreement, shall grant to the Developer all easements and licenses as may be required and appropriate for the construction and operation of the Improvements on any Phase Parcel.

Section 208: Federal Tax Stamps and Other Closing Costs.

Developer shall pay the costs of recording any Deed, this Agreement, and all other instruments and plans to be recorded together with any Deed and the costs of any Federal or State documentary tax stamps which shall be required in connection therewith.

Section 209: Adjustments.

The Authority shall cause the MBTA, pursuant to the MBTA Purchase Agreement, to pay all Operating Costs of all portions of the Property allocable with respect to any period before delivery and conveyance of the respective Phase Parcels from the Authority to the Developer. Developer shall pay all Operating Costs for each Phase Parcel allocable with respect to any period after delivery and conveyance of the particular Phase Parcel.

"Operating Costs" as used herein shall refer to real estate taxes, water and sewer use charges and assessments, betterment

assessments, insurance and any and all other charges and expenses related to the ownership and use of the Property. Simultaneously with the delivery and conveyance of a particular Phase Parcel, Developer shall pay water and sewer charges and assessments, if any, allocable to the Phase Parcel with respect to any period after delivery and conveyance of said Phase Parcel and a payment in lieu of taxes for the particular Phase Parcel allocable to the days ensuing in the fiscal year after the date of the conveyance for the particular Phase Parcel computed in accordance with Section 63A of Chapter 44 of the General Laws of Massachusetts.

Section 210: Default by the Authority re: Conveyance.

In the event that the Authority shall be unable to give title or to make conveyance or to deliver possession of a Phase Parcel as provided herein, the Authority shall use reasonable efforts (but without obligation to expend more than \$50,000 towards such efforts, exclusive of efforts to remove or otherwise dispose of Hazardous Wastes which effort shall be the obligation of the MBTA, pursuant to the MBTA Purchase Agreement), to make conveyance or to deliver possession as herein agreed, as the case may be. The Authority shall give written notice thereof to the Developer, as soon as the Authority reasonably determines that it cannot convey or deliver possession to the particular Phase Parcel as herein agreed, but in no event later than sixty (60) days before the Closing Date in question, and thereupon the time for the performance by the Authority shall be extended for a period of

sixty (60) days, or such longer period as the Authority and the Developer shall mutually agree; provided, however, that the Developer shall have the election, either at the original or any extended time for performance, to accept such title and possession as the Authority can deliver to the particular Phase Parcel and to pay therefor the purchase price, without deduction, except as to an amount equal to the cost reasonably determined, pursuant to Section 204 hereof, to be the cost to remove Hazardous Wastes from such Phase Parcel or from any other Phase Parcel conveyed to the Developer prior to such Phase Parcel, in which case the Authority shall convey such title. In the event that at the expiration of the extended time the Authority shall be unable to make conveyance or to deliver possession as herein provided and the Developer elects not to accept such title, then, at the further election of the Developer, all obligations of the parties hereto shall cease and become null and void with respect to the particular Phase Parcel and the parties shall have no further rights, obligations or recourse to each other hereunder as to the particular Phase Parcel or, at the election of the Developer, with respect to all Phase Parcels not yet conveyed to the Developer (the "Unconveyed Phase Parcels") in which event this Agreement shall terminate and be null and void with respect to the Unconveyed Phase Parcels and the parties shall have no further rights, obligations or recourse

to each other hereunder with respect to the Unconveyed Phase
Parcels.

Section 211: Default by Developer prior to Conveyance.

In the event that at any time after the Developer has given a
Phase Designation Notice but prior to the conveyance of a
particular Phase Parcel, the Developer shall default in its
obligations hereunder and shall be unable to correct such default
within 180 days after written notice thereof (or within such
extended period of time as may be established by the Authority
acting solely in its discretion) or, where cure requires more than
180 days, if the Developer does not promptly begin such cure and
thereafter diligently prosecute the same to completion, then the
Authority may, at its election, by notice to the Developer given
on or prior to the Closing Date terminate the rights of the
Developer with respect to the particular Phase Parcel or to all
Phase Parcels, not yet conveyed to the Developer (the "Unconveyed
Phase Parcels") and this Agreement shall terminate and be null and
void with respect to such Phase Parcel (or such Unconveyed Phase
Parcels) without further rights, obligations or recourse to the
parties.

ARTICLE IIA

PUBLIC IMPROVEMENTS

Section 201A: Development of Public Improvements.

The Authority shall cause to be constructed the Public Plaza
Improvements, including without limitation the public plaza,

pedestrian walkways and related public structures and amenities, to be located on the Public Plaza Phase Parcel, which Public Plaza Improvements are more particularly described in the PDA/DIP Master Plan.

Section 202A: Time for Commencement and Completion of Public Plaza Improvements.

[OPEN: On or before the Closing Date for the first Phase Parcel, the Authority shall acquire title to the Public Plaza Phase Parcel from the MBTA.] Within three (3) months after the Developer commences construction on any portion of the first Phase Parcel, the Authority of the City shall commence the design/development of the Public Plaza Improvements and as promptly as possible thereafter shall commence public bidding for the construction thereof and shall substantially complete the Public Plaza Improvements (subject to unforeseen delays, including, without limitation delays for force majeure), not later than [six (6)] months after the completion date of the Improvements for the first Phase Parcel. [DISCUSS: Developer Remedy?]

Section 203A: Maintenance Agreement; Public Easements.

Upon the completion of construction of the Public Plaza Improvements, the Authority or the City, and the Developer, in its capacity as owner of the first Phase Parcel, shall enter into a maintenance agreement in such form as the Authority or the City

and Developer shall agree. The maintenance agreement shall provide that, at the election of the Developer, either the Developer or the owner of the first Phase Parcel shall be responsible to maintain and repair the Public Plaza Improvements. At such time as the Developer shall purchase subsequent Phase Parcels, the maintenance agreement shall be amended to allocate the maintenance and repair costs among, at the election of the Developer, either the Developer and/or each of the Phase Parcel owners in such proportion as shall be agreed to by the Developer and the Phase Parcel owners. The Developer shall not be required to purchase the Public Plaza Phase Parcel; title thereto shall remain in the Authority or the City. However, simultaneously with the purchase of the first Phase Parcel by the Developer, the Authority or the City shall grant to the Developer for the benefit of each Phase Parcel, permanent, non-exclusive public easements, in common with others, burdening the Public Plaza Phase Parcel for pedestrian and vehicular access and egress and for utilities and for the right to enter upon the Public Plaza Phase Parcel to repair and maintain the same. In addition, the MBTA, pursuant to the MBTA Purchase Agreement, shall grant the Authority or the City and to the Developer all easements and licenses over that portion of the Property not yet conveyed by the MBTA as may be required and appropriate for the construction of the Public Plaza Improvements on the Public Plaza Phase Parcel.

ARTICLE III

RESTRICTIONS AND CONTROL UPON DEVELOPMENT

Section 301: Restrictions on Use; Signage.

a. The Developer shall be entitled to develop the Improvements on the Property in Phases for uses which may include any combination of the PDA Permitted Uses. It is anticipated that the Improvements, when completed for all Phases, shall consist of approximately 1,220,000 square feet of gross floor area, inclusive of parking, all to be located on approximately 222,295 square feet of land, and shall be in conformity with designs approved in accordance with the Development Review Procedures. Each Phase may be owned or leased and financed independently of any other Phase, and each Phase, therefore, must be considered independent and capable of being conveyed as such.

b. No freestanding sign shall be erected on the Property without the approval of the Authority which approval shall be in accordance with the Boston Sign Code.

c. The covenants in subsections (a) and (b) of this Section 301 and those in Articles IV, VI and XII shall be applied separately to each Phase Parcel and, as so applied, shall be covenants running with the respective Phase Parcels and shall terminate with regard to each of the Phase Parcels on the Covenant Expiration Date for such Phase Parcel. No violation of any such covenant applicable solely to a Phase Parcel shall be considered a

violation of any such covenant with respect to any other Phase Parcel.

Section 302: Improvements and Submission of Plans.

a. The Development Review Procedures sets forth the formal stages of submissions and approvals for the Design Documentation relating to the Improvements for each Phase. All aspects of the Design Documentation for the Improvements for each Phase shall conform to the PDA/DIP Master Plan and the PDA Development Plan for each Phase, as they may be amended and revised by the agreement of the parties thereto, and to the terms and conditions of this Agreement, as they may be amended by the parties hereto. The several stages of review of the Design Documentation as defined in Exhibit D (which, as set forth in this Section 302, shall be applied separately to each Phase) are the Schematic Design, the Design Development, the Contract Documents (including Drawings and Specifications) and the Construction Inspection. Simultaneously with the submission by the Developer to the Authority of each stage of the Design Documentation for each Phase, the Authority shall submit copies thereof to the MBTA. No violation of any paragraph or provision of this Section 302 with respect to a Phase shall be considered a violation of any paragraph or provision of this Section 302 with respect to any other Phase.

b. It is the general policy of the Authority that all new buildings shall be designed and constructed to accommodate persons who are physically handicapped. In furtherance of this policy, and without limiting Developer's obligation to comply with all legal requirements applicable thereto, the Design Documentation (including the Drawings and Specifications) for the Improvements for each Phase shall include provisions conforming insofar as practicable with Article 30 of the code (Barrier-Free Access) and the "American Standard Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped" as published by the National Society for Crippled Children and Adults, Inc., which specifications, as amended from time to time, are hereby incorporated herein by reference. The Authority shall take into consideration the provisions and objectives of such specifications in its review of and action upon the Design Documentation (including Drawings and Specifications) for the Improvements for each Phase.

c. Developer shall submit the Schematic Design for the Improvements for a particular Phase to the Authority for its approval. The Authority shall review said Schematic Design, including materials, for conformity with the PDA Development Plan for the particular Phase and this Agreement and shall within sixty-five (65) days after receipt thereof and after meeting with the Developer, either approve said Schematic Design as conforming with the PDA Development Plan for the particular Phase and this

Agreement or notify Developer in writing of its disapproval, specifying the respects in which the Schematic Design for the particular Phase does not conform with the PDA Development Plan and this Agreement.

In the event of a disapproval, Developer shall, within a reasonable period after Developer receives the written notice of such disapproval, resubmit the Schematic Design altered so as to conform to the PDA Development Plan and this Agreement and to provide revised Schematic Design in those respects specified by the Authority as the grounds for disapproval. The resubmission shall be subject to the review and approval of the Authority in accordance with the procedure hereinabove provided for an original submission, until the Schematic Design for the Improvements for the particular Phase shall be approved by the Authority. Upon approval the Authority shall then issue its Schematic Design Approval Letter for the particular Phase.

If Developer receives no notification from the Authority of such disapproval within sixty-five (65) days after submission of said Schematic Design or any correction thereof, as the case may be, such Schematic Design or corrected Schematic Design shall be deemed approved.

d. Within a reasonable period after the Authority has approved or has been deemed to approve the Schematic Design for the Improvements for a particular Phase, Developer shall submit to the Authority the Design Development for the Improvements for the

particular Phase as described in the Development Review Procedures. The Authority shall review said Design Development for conformity with the approved Schematic Design and this Agreement and for the acceptability of design details not included in prior approved submissions ("Design Details") and shall, within fifteen (15) days after receipt thereof and after meeting with the Developer, either approve said Design Development as conforming with the approved Schematic Design and this Agreement and providing acceptable Design Details or notify Developer in writing of disapproval, specifying the respects in which the Design Development for the particular Phase does not conform with the approved Schematic Design and this Agreement or in which the Design Details provided therein are unacceptable.

In the event of a disapproval, Developer shall, within a reasonable period after Developer receives the written notice of such disapproval, resubmit said Design Development altered so as to conform to the approved Schematic Design and this Agreement and to provide revised Design Details in those respects specified by the Authority as the grounds for disapproval. The resubmission shall be subject to the review and approval of the Authority in accordance with the procedure hereinabove provided for an original submission, until the Design Development for the Improvements for the particular Phase shall be approved by the Authority.

If Developer receives no notification from the Authority of such disapproval within fifteen (15) days after submission of said

Design Development, including Design Details, or any correction thereof, as the case may be, such Design Development or corrected Design Development, including Design Details, shall be deemed approved.

e. Within one hundred fifty (150) days after the Authority has approved or has been deemed to approve the Design Development for the Improvements for the particular Phase, Developer shall submit to the Authority the Drawings and Specifications and other Contract Documents for the Improvements for the particular Phase as described in the Development Review Procedures. The Authority shall review said Drawings and Specifications and other Contract Documents for conformity with the approved Design Development and this Agreement and the acceptability of the Design Details provided for therein and shall, within fifteen (15) days after receipt thereof, either approve said Drawings and Specifications and other Contract Documents as conforming with the approved Design Development and this Agreement and providing acceptable Design Details or notify Developer in writing of disapproval, specifying the respects in which said Drawings and Specifications and other Contract Documents do not conform to the approved Design Development for the Improvements for the particular Phase and this Agreement or in which the Design Details provided therein are unacceptable.

In the event of a disapproval, Developer shall, within a reasonable period after Developer receives the written notice of

such disapproval, resubmit the Drawings and Specifications and other Contract Documents altered so as to conform to said approved Design Development and this Agreement and to provide revised Design Details in those respects specified by the Authority as the grounds for disapproval. The resubmission shall be subject to the review and approval of the Authority in accordance with the procedure hereinabove provided for an original submission, until the Drawings and Specifications and other Contract Documents for the Improvements and revised Design Details for the particular Phase shall be approved by the Authority.

If Developer receives no notification from the Authority of such disapproval within fifteen (15) days after submission of the Drawings and Specifications and other Contract Documents, including Design Details, or any correction thereof, as the case may be, such Drawings and Specifications and other Contract Documents, including Design Details, or corrected Drawings and Specifications and other corrected Contract Documents, including Design Details, shall be deemed approved.

f. A separate Development Review Procedure shall be undertaken for each Phase conforming to the process described above (except as otherwise provided below). A violation of the Development Review Procedures with respect to a particular Phase Parcel shall not be considered a violation of the Development

Review Procedures with respect to any other Phase Parcel which has been purchased or leased by the Developer prior to the occurrence of said violation.

g. As part of the Development Review Procedures, the Authority shall require the Developer to take all reasonable and economical measures consistent with the scope of the particular Phase as presently conceived to mitigate damage to the environment identified in the environmental impact report to be prepared by the Developer for the Secretary of Environmental Affairs pursuant to MEPA in the environmental review process associated therewith.

h. The Development Review Procedures may incorporate and allow changes, from time to time, from the approved Schematic Design (and subsequent elaborations thereof) in order to preserve the essential rights and obligations of the parties to the extent reasonably necessitated by changes of conditions applicable to the particular Phase Parcel including without limitation changes in leasing or construction markets or inability to obtain or conditions imposed in connection with any governmental approvals, permits, licenses, variances, exceptions or other legal requirements, and the like. Decisions made by the Authority after good faith reasonable attempts to preserve the essential rights and obligations of the parties shall be conclusive.

i. For each Phase the Developer shall not apply for a foundation or building permit for the construction of the Improve-

ments or any part thereof without the prior certification of the Authority that the work to be done as set forth in the permit application is in accordance with the Drawings and Specifications approved by the Authority in accordance with the requirements of this Agreement. In its construction of the Improvements, the Developer shall insure that there is no material deviation from such Drawings and Specifications in connection with the external appearance of the Improvements open to public view, except and only to the extent that Change Orders have been requested in writing and have been approved in writing by the Authority.

It is agreed that all Change Orders issued and implemented subsequent to approval by the Authority of Drawings and Specifications constitute a deviation from the approved Drawings and Specifications. The Developer agrees that no Change Order will be implemented unless such Change Order shall have been submitted to the Authority and shall thereafter have been approved or shall be deemed to have been approved by the Authority. The Authority shall approve or disapprove a Change Order (i) within seven (7) days of its submission to the Authority when such Change Order involves minor changes and (ii) within twenty (20) days when such Change Order involves major changes. For purposes of this Agreement, a major change is any change having a cost of \$1,000,000 or greater. When the Authority disapproves a Change Order involving a major change, its disapproval shall include a detailed written

explanation therefor. If Developer receives no notification from the Authority of such disapproval after submission of said Change Order within seven (7) days as to a minor change or within twenty (20) days as to a major change, such Change Order shall be deemed approved.

In the event the Developer shall fail to comply with the foregoing requirements in proceeding with construction or modification of all or any part of the Improvements, promptly after discovery thereof, the Authority shall notify the Developer and, if the Authority determines that such failure constitutes a substantial deviation from the foregoing requirements, the Authority may, by written directive given to the Developer within a reasonable time after the discovery thereof, require the Developer to modify or reconstruct such portion or portions of the Improvements as deviate from the approved Drawings and Specifications or any Change Order with respect thereto in order to bring them into conformance therewith. The Developer shall promptly comply with such a directive. In addition to any other remedies available to it under law or under this Agreement, the Authority may enforce the provisions of this Section 302 by an action in a court of appropriate jurisdiction to compel specific performance by the Developer with respect to the particular Phase in question.

Section 303: Time for Commencement and Completion of Improvements.

a. The Developer shall commence construction of the Improvements on each of the Phase Parcels on or before the applicable Construction Commencement Date.

b. The Developer shall diligently prosecute to completion the construction of the Improvements on each of the Phase Parcels and (subject to unforeseen delays including, without limitation, delays for force majeure and subject to extensions as may be issued by the Authority in its reasonable discretion) shall substantially complete such construction, as provided in Section 304 hereof, within thirty (30) months after the applicable Construction Commencement Date.

c. The Developer shall submit to the Authority for its approval a detailed estimated construction progress schedule for each Phase prior to commencement of construction of the Improvements for such Phase in a format generally used in the construction of buildings. This schedule shall be revised as construction proceeds from time to time, but not less frequently than semi-annually, and whenever a delay of more than 60 days is anticipated, and such revisions shall promptly be submitted to the Authority. Any submission of a revised construction progress schedule shall be accompanied by a written report by the Developer citing any adjustments to the progress forecast, analyzing the causes thereof, and, where applicable, noting corrective efforts

which shall be reasonably satisfactory to the Authority. Any such corrective efforts of the Developer shall be subject to inspection by representatives of the Authority, and the Authority shall endeavor to notify the Developer promptly in writing of any major defects directly observed by it. Upon receipt of any such notification, the Developer shall promptly undertake and proceed diligently to cure any such defects to the reasonable satisfaction of the Authority.

If Developer receives no notification from the Authority of disapproval of said construction progress schedule or revised construction progress schedule, as the case may be, within seven (7) days after submission thereof, said construction progress schedule or revised construction progress schedule shall be deemed approved.

d. It is intended and agreed that the agreements and covenants contained in this Section 303 with respect to the commencement and completion of each of the Phases shall be covenants running with each of the respective Phase Parcels. This subsection shall not, however, apply against any mortgagee permitted by this Agreement unless the mortgagee shall elect to complete as permitted in Section 503, in which case the extension provisions of that Section shall apply.

Section 304: When Improvements Completed.

a. The construction of each Phase shall be deemed completed for the purposes of this Agreement when the Improvements are built substantially in accordance with the provisions of this Agreement, the PDA/DIP Master Plan, the applicable PDA Development Plan, the PDA Cooperation Agreement, the approved Drawings and Specifications and Contract Documents, and any approved Change Order with respect thereto, except for (i) items of work and adjustment of equipment and fixtures which can be completed after occupancy has occurred, e.g. so-called punchlist items, (ii) landscaping and other similar work which cannot then be completed because of climatic conditions and (iii) with respect to office, retail and other tenant space, items of work normally left for completion pursuant to the requirements of specific occupancy agreements including, without limitation, construction of interior partitions and doors, distribution of electrical outlets and switches, location of ventilation ducts and returns, and placement of lighting fixtures and the installation of ceilings.

b. If the Authority issues a Certificate of Completion for a Phase prior to completion of the work described in clauses (i) and (ii) above and any and all other work required by approved plans and specifications which, in the reasonable opinion of the Authority, should be completed prior to the issuance of a Certificate of Completion, then as security for the completion of such work, the Developer shall deposit with the Authority, or, if

required by any mortgagee, with the holder of the first mortgage on the Phase for which the Certificate of Completion is sought pursuant to an escrow or holdback agreement approved by the Authority (such approval not to be unreasonably withheld or delayed), an amount which, in the reasonable opinion of the Authority, and, if applicable, the mortgagee, is sufficient to cover the cost of such completion, such amount to be returned to Developer promptly upon the completion of such work (to the reasonable satisfaction of the Authority and holder of the mortgage) except to the extent such amount of the deposit is applied to the completion of such work as provided hereinafter. The Authority agrees that it will not unreasonably disagree with the decisions of any mortgagee on these issues. Said deposit, if deposited with the Authority or the first mortgagee, as the case may be, shall be in cash, certified check, bond, letter of credit, or by other similar security, the form of such security to be subject to the reasonable approval of the Authority and the mortgagee. The deposit shall be delivered simultaneously with the issuance of the Certificate of Completion. If such work is not so completed to the reasonable satisfaction of the Authority, within a reasonable time after the issuance of such Certificate of Completion, and in any event within one (1) year of such issuance (unforeseen delays notwithstanding), then the Authority shall promptly thereafter deliver such deposit to the holder of any such first mortgage, who shall apply such deposit to the completion of

the outstanding work to the satisfaction of the Authority, it being understood that the mortgagee shall not be required to apply any of its own funds thereto. The Authority will act reasonably and in good faith where its rights hereunder correspond to similar rights of the mortgagee, but the Authority may act independently of the mortgagee if in the Authority's reasonable judgment the rights of both cannot be accommodated. If the Authority issues a Certificate of Completion prior to completion of the work described in clause (iii) above, Developer agrees to complete such work within a reasonable time after the leasing of such tenant space.

c. Periodically, or as frequently as monthly, during construction of the Improvements with respect to a particular Phase, upon the reasonable prior written request of Developer or any mortgagee that it wishes a determination from the Authority as to the compliance of a particular aspect of construction of the Improvements with the provisions of this Agreement, the PDA/DIP Master Plan, the PDA Development Plan, the PDA Cooperation Agreement, the Development Review Procedures, the approved Drawings and Specifications, and any approved Change Order with respect thereto, the Authority shall consult with the Developer, and any mortgagee who has requested such determination, and, to the extent that the Authority can reasonably make such determination and to the extent that the Developer or any such mortgagee provides information reasonably requested by the Authority in connection

with such determination, the Authority shall make a determination with respect to the compliance of such aspect of construction with such provisions and deliver to the Developer and any such mortgagee a written statement setting forth its determination ("Statement of Compliance"). To the extent that any information furnished to the Authority by Developer, as provided above, is accurate and complete, the Developer and any mortgagee shall be entitled to rely upon such statement and such statement shall be conclusive with respect to the matters discussed therein.

d. Promptly after substantial completion of a Phase substantially in accordance with the requirements of this Agreement, the Authority will furnish to the Developer and to any mortgagee of such Phase a Certificate of Completion which certifies such substantial completion. Such certification by the Authority shall be conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligations of the Developer to construct such Phase, except for aspects thereof to be completed thereafter, which aspects shall be detailed in a separate letter from the Authority to be supplied promptly thereafter. Promptly after completion of any aspects of construction on a Phase to be completed after issuance of a Certificate of Completion therefor as detailed in said separate letter, the Authority will furnish the Developer and any mortgagee of such Phase with a letter which certifies that said aspects of construction have been completed.

Developer agrees that the Authority shall be under no obligation to issue a Certificate of Completion with respect to a particular Phase until such time as the Authority has had a reasonable opportunity to inspect the Improvements constructed with respect to such Phase pursuant to the provisions of this Agreement, the PDA/DIP Master Plan, the PDA Development Plan, the PDA Cooperation Agreement, the Development Review Procedures, the approved Drawings and Specifications and the other Contract Documents (as modified by any Change Order approved by the Authority). The Authority shall not be required to make an inspection hereunder unless the Developer or any mortgagee has requested the Authority, by written notice thereto, to issue a Certificate of Completion.

The Certificate of Completion provided for in this Section shall be in suitable form for recording in the Registry of Deeds for Suffolk County, Commonwealth of Massachusetts. If the Authority shall refuse or fail to provide such Certificate of Completion in accordance with the provisions of this Section, the Authority shall, within forty (40) days after receipt of a written request by the Developer or any mortgagee, provide the Developer and any such mortgagee with a written statement, indicating in adequate detail in what respects the Developer has failed substantially to complete construction of the particular Phase in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts will be necessary, in the reasonable opinion

of the Authority, for the Developer to take or perform in order to obtain such Certificate of Completion. The Authority shall not withhold a Certificate of Completion for any aspect of construction which the Authority has determined in a Statement of Compliance to be in compliance with the approved Drawings and Specifications and any approved Change Orders thereto. If the Authority shall refuse or fail to provide such a written statement to the Developer or any such mortgagee within forty (40) days of a request therefor, then the instrument certifying substantial completion of the particular Phase shall be deemed to have been issued and the Developer and any such mortgagee shall be entitled to obtain specific performance ordering such instrument to issue.

Section 305: Prompt Payment of Obligations.

Without limiting the right of Developer, or its contractors or subcontractors, to withhold payment of any monies which Developer, or its contractors or subcontractors, is contesting or disputing in good faith, the Developer of a Phase shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms and corporations doing any work, furnishing any materials or supplies or renting any equipment to the Developer of such Phase or any of its contractors or subcontractors in connection with the development, construction, furnishing, repair or reconstruction of any of the Improvements included in such Phase. Neither this provision nor any other

provision of this Agreement shall be construed to create rights in anyone who is not a party to this Agreement.

ARTICLE IV

CHANGES AND ALTERATIONS

Section 401: Changes after Completion.

After the Improvements included within a Phase have been completed in accordance with this Agreement and prior to the Covenant Expiration Date for such Phase, no person shall, without the prior written approval of the Authority, reconstruct, demolish, subtract therefrom, make any additions thereto or extensions thereof, or permanently change the materials, design, dimensions, or color thereof, if such reconstruction, demolition, subtraction, addition, extension or change would affect in any material way the external appearance of public lobbies, arcades, open spaces, pedestrian walkways and courtyards or landscaping, or the external appearance of any building (including roof and penthouse) or other external Improvements included in such Phase except that any restoration of the Improvements after a casualty or eminent domain taking to the condition required to exist prior to such event shall not require approval of the Authority.

Section 402: Procedures for Changes.

a. In requesting such approval or confirmation of compliance with Section 401 for a particular Phase, there shall be

submitted to the Authority for its approval such plans, specifications, and other materials for the proposed work as are required by the Development Review Procedures, all within such reasonable time limits as the Authority shall require therefor.

b. If the Authority shall consent to any alteration, addition, change or modification requiring such consent under Section 401 hereof, the same shall be accomplished in compliance with these requirements:

(i) No work shall be undertaken until there shall have been produced and paid for, or caused to be paid for, so far as the same may be required from time to time, all governmental permits and authorizations of the various governmental agencies having jurisdiction.

The Authority agrees to join in the application for such permits or authorizations, whenever such action is necessary, but at the Developer's sole cost and expense.

(ii) No work shall be undertaken until there shall have been presented evidence reasonably acceptable to the Authority of Developer's ability to pay for the cost thereof.

Section 403: Failure to Comply with Change Requirements.

If there shall be a failure to comply with the foregoing requirements of this Article IV, the Authority may, without limiting other remedies available to it, direct in writing that any work done without the prior written approval of the Authority be

modified, reconstructed or removed. Such a directive shall promptly be complied with and no further work shall be done until such directive is satisfied. The Authority shall not exercise the remedy described in this Section if and to the extent that the Developer has proceeded in good faith in construction and reasonably demonstrates that it is more likely than not that the Authority would have approved the work in question had it been submitted for approval pursuant to Section 402.

ARTICLE V

TRANSFER AND MORTGAGE OF DEVELOPER'S INTEREST

Section 501: General Terms Relating to Transfer of Interest in Property by Developer.

a. With respect to each Phase Parcel, during the period commencing on the Closing Date and ending on the date which is ten (10) years from the date of issuance of the initial building permit for the construction of the Improvements thereon (the "Ten Year Period"), no legal or beneficial interest in such Phase (which term shall be deemed to include successors in interest of such interest) shall be transferred, or caused or suffered to be transferred, which would directly or indirectly change the legal or beneficial ownership interests in, or control of, the Developer of such Phase from that existing on the Closing Date (which ownership interests shall be set forth in the Disclosure Statement to be submitted by the Developer to the Authority at Closing pursuant to Article 31A of the Code), without the written approval

of the Authority, which shall not be

unreasonably withheld, except that no such written approval shall be required with respect to (i) an involuntary transfer caused by the death or incapacity of any such party, or (ii) a transfer of interests in connection with a bona fide financing transaction (which may include loans or equity investments) or a bona fide occupancy lease (which may include providing equity interests to a bona fide occupancy tenant) so long as Metropolitan, Columbia, Metropolitan/Columbia and/or the Developer remains a managing partner, or (iii) a transfer to an entity controlled by Metropolitan, Columbia, Metropolitan/Columbia and/or the Developer, so long as Metropolitan, Columbia, Metropolitan/Columbia and/or the Developer remains a managing and controlling partner, or (iv) a transfer as provided in Section 502 hereof or (v) transfers or changes in ownership aggregating no more than ten percent (10%) in beneficial interest in the Developer (the foregoing exceptions (i) through (v) are referred to collectively as the "Transfer Exceptions"); nor without such written approval shall there be any other change in the ownership of such interests or in the relative distribution thereof or change in identity of the parties in control, or in the degree of control of the Developer, by any other methods or means. The Developer shall advise the Authority of any and all proposed changes in such interests and shall in addition furnish the Authority with an up-to-date list of all present and proposed new

owners thereof whenever such changes aggregate more than ten percent (10%) beneficial interest in the Developer, and with any other information relating to such proposed change which the Authority shall reasonably require. Once the Ten Year Period has expired for a particular Phase, there shall be no limitation imposed hereby relative to the legal or beneficial ownership of the Phase in question, or the Developer.

b. Developer may itself convey or cause the Authority to convey each Phase to separate entities which are affiliates of Developer and which otherwise comply with the ownership requirements hereof originally imposed on Developer, provided that as a condition precedent, the Developer shall notify the Authority in writing of the proposed transfer of ownership and the Director of the Authority shall deliver a written certification that such entities comply with the ownership requirements hereof, and further provided that each entity expressly assumes, and agrees to be bound by this Agreement, to the extent the same applies to the Phase in question. Except as provided above, with respect to each Phase, after the Closing Date and until the issuance of the Certificate of Completion for such Phase, the Developer will not allow, except as otherwise expressly permitted in this Agreement, any liens or encumbrances to exist on such Phase except (i) those existing on the Closing Date, (ii) any mortgages or other encumbrances (whether or not from a partner in the Developer or any affiliate thereof) given to secure, or leasehold interests

created in connection with, the construction or permanent financing for the particular Phase and (iii) any cross easements, utility easements and the like which are necessary or desirable for the development of any portion of the Property (each of which cross easements, utility easements, and the like, unless expressly permitted hereunder, shall be subject to the prior approval of the Authority, which approval shall not be unreasonably withheld and which approval or disapproval shall be made within thirty (30) days of the submission thereof to the Authority).

c. Except as permitted pursuant to the Transfer Exceptions (as to which no approval of the Authority shall be required), with respect to each Phase, after the Closing Date and until the expiration of the Ten Year Period for such Phase, the Developer will not make or suffer to be made any sale, transfer, conveyance, assignment, master lease (which shall not preclude bona fide occupancy leases), or any other manner of transfer of its interest in such Phase, or in this Agreement as it relates to such Phase, unless the Developer shall have complied with the following covenants, which shall be covenants that run with the land:

1. The transferee or transferees shall have been approved in writing by the Authority, which approval shall not be unreasonably withheld, taking into consideration with respect to the proposed transferee or tranferees their reputation, experience in management of real estate, financial capacity and ability requisite to perform the

obligations and duties of the Developer under this Agreement with respect to the particular Phase.

2. The transferee or transferees, by valid instrument in writing, satisfactory to the Authority, shall have expressly assumed for themselves and their successors and assigns, and directly to and for the

benefit of the Authority, all obligations of any person or persons, including the Developer, to begin and complete construction of the Improvements and all obligations of the Developer provided for in this Agreement with respect to such Phase. The fact that any transferee of, or any other successor in interest whatsoever to the Improvements, shall, for whatever reason, not have assumed such obligations, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit the Authority of or with respect to any rights or limitations or controls with respect to such Phase, or the construction of the Improvements thereon. It is the intent of this Article V, together with other provisions of this Agreement, to insure (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) that no transfer of or change with respect to ownership, possession, or control, shall operate legally or practically to deprive or limit the Authority of or with respect

to any rights or remedies or controls provided in or resulting from this Agreement with respect to such Phase, and the construction of the Improvements thereon that the Authority would have permitted had there been no such transfer or change. In the event of any such transfer without such assumption of obligations, the Developer of such Phase shall pay to the Authority the expenses and costs of any actions or proceedings instituted to enforce all such obligations, conditions, and restrictions, and all of the Authority's said rights, remedies, and controls as against such transferee.

Therefore, in the absence of a specific written agreement by the Authority to the contrary, no such transfer or approval thereof by the Authority shall be deemed to relieve the Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

3. There has been submitted to the Authority for review, and the Authority has approved, all instruments and other legal documents involved in effecting the proposed transfer; provided, however, that the Developer shall not be required to submit any

partnership agreements to the Authority, but may be required to provide supporting information as may be reasonably required by the Authority for its accurate understanding of the contemplated transfer prior to its approval of the transfer, including, without limitation, copies of the instruments and other legal documents filed with public offices to effect such transfer.

4. The Developer and its transferee and transferees shall comply with such other reasonable conditions as the Authority may find reasonably necessary and desirable in order to achieve and safeguard the purposes of this Agreement.

d. In the event of any transfer by Developer of a Phase as permitted in this Section 501, all obligations, responsibilities and liability of the Developer under this Agreement and the Instruments with respect to such Phase shall cease, and the Authority shall look only to the transferee for the satisfaction of such obligations and responsibilities, and the assertion of such liability, provided however that the Developer shall remain liable for defaults incurred by Developer of its obligations and responsibilities hereunder occurring prior to such transfer. If the transferee shall fail or refuse to effect the cure of any

violation under this Agreement, the Authority may institute such actions or proceedings against the transferee as the Authority deems appropriate, including actions and proceedings to compel specific performance, subject to the provisions of Section 905 of this Agreement. Payment of all costs and expenses which may be incurred by the Authority in instituting and prosecuting such action or proceedings shall be governed by Section 701 of this Agreement.

e. Notwithstanding any other provisions of this Article V, the provisions of this Section 501 shall not apply to or prohibit any sale (whether by foreclosure or otherwise) transfer, conveyance assignment, master lease or any other manner of transfer of any Phase to or by any bona fide mortgage holding a mortgage encumbering such Phase.

Section 502: Mortgage of Phase Parcels by the Developer.

a. The limitations contained in this Agreement relating to Developer's right to encumber, pledge or convey its rights, title and interest in and to each Phase by way of a bona fide mortgage shall terminate with respect to each Phase on the date of the Certificate of Completion for the Phase in question.

b. Notwithstanding any other provisions of this Agreement, the Developer shall at all times have the right to encumber, pledge, or convey its rights, title and interest in and to each Phase Parcel and the Improvements thereon, or any portion or portions thereof, by way of bona fide mortgage or mortgages to secure the payment of any loan or loans obtained by the Developer or to

exercise such rights hereunder, including in such notice the name(s) and address(es) of such mortgagee(s) and any other information regarding the mortgagee(s) and mortgage documents which the Authority may reasonably require.

c. Mortgages on a particular Phase thereon may either secure indebtedness related to the acquisition, development, construction, repair or reconstruction of only such Phase or of such Phase and one or more other Phases. Mortgages on a particular Phase Parcel may secure or cross collateralize indebtedness or obligations in connection with the acquisition, development, construction, repair or reconstruction of other Phase Parcels. No mortgages on any Phase Parcel or the Improvements thereon may secure or cross-collateralize indebtedness or obligations arising in connection with other properties unrelated to the development of the Property. Each such mortgagee shall agree that the proceeds of such indebtedness shall be used only in the development of the Property, or, if related to only one Phase, to the development of the particular Phase.

The holder of any such mortgage or its designee (including such a holder or its designee who obtains title to such Phase Parcel and the Improvements thereon by foreclosure or action in lieu thereof, and including a party who obtains title through such holder or any purchaser at a foreclosure sale other than the holder or its designee) shall not be obligated by this Agreement

to construct or complete the Improvements or to guarantee such construction or completion, but shall have the options described in Section 503.

Section 503: Rights and Duties of Mortgagee Upon Acquisition Prior to Completion.

a. If a mortgagee or its designee, or a purchaser at a foreclosure sale, through the operation of its contract to finance the acquisition of a Phase Parcel or the development of the Improvements thereon or by foreclosure, or action in lieu of foreclosure, acquires fee simple or leasehold title to such Phase Parcel and the Improvements thereon prior to the issuance of a Certificate of Completion for such Phase, the mortgagee or its designee, or such other purchaser, shall have the following options only:

1. Complete construction of such Phase in accordance with the approved Drawings and Specifications and any approved Change Order, this Agreement, the PDA/DIP Master Plan, PDA Development Plan, PDA Co-operation Agreement and Development Review Procedures and in all other respects comply with the provisions of this Agreement, or
2. Sell, assign, or transfer, with the prior written consent of the Authority (such consent not to be

unreasonably withheld or delayed), fee simple or leasehold title to the Phase Parcel and Improvements thereon to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement in respect to only such Phase by written instrument satisfactory to the Authority and recorded forthwith in the Suffolk County Registry of Deeds, or

3. Reconvey fee simple or leasehold title to the Phase Parcel and Improvements thereon to the Authority, in which event the provisions of Section 901 relative to resale shall apply.

b. In the event that a mortgagee or its designee, or such other purchaser, elects to complete construction pursuant to subsection (a)(1) above, or sells, assigns or transfers pursuant to subsection (a)(2) above, the Authority shall extend the time limits set forth in Section 303 herein as shall be reasonably necessary to complete construction of the Improvements in accordance with this Agreement, and upon such completion, the mortgagee, its designee or purchaser, as the case may be, shall be entitled to the Certificate of Completion pursuant to Section 304.

c. In no event shall any mortgagee or its designee, or such purchaser be liable for defaults of this Agreement prior to the

time it acquires title or takes possession of a particular Phase Parcel or after it shall sell, assign or transfer title or possession, provided that development, ownership and operation of the particular Phase shall be subject to compliance with this Agreement and shall require corrections of any such defaults within the time period allowed (as extended hereunder). Notwithstanding the immediately preceding sentence, in no event shall any mortgagee or its designee, or such purchaser be subject to personal liability for defaults of this Agreement while it owns or controls the particular Phase, all such liability being hereby limited to the interest of said mortgagee or its designee, or such purchaser in the particular Phase. A mortgagee or its designee, or such purchaser of one Phase shall not be responsible for any obligations associated with any other Phase unless and until such mortgagee or its designee or such purchaser shall acquire title to any such other Phase.

ARTICLE VI

PROVISIONS RELATING TO OPERATION AND MAINTENANCE

Section 601: Maintenance and Operation.

With respect to each Phase, the Developer of such Phase shall, at all times after the Closing Date and until the Covenant Expiration Date for such Phase, keep such Phase in good and safe condition and repair; and in the occupancy, maintenance and

operation of such Phase, Developer shall comply with all laws, ordinances, codes and regulations applicable thereto, subject however to the right of the Developer to contest in good faith all such laws, ordinances, codes and regulations applicable thereto before complying with the same.

ARTICLE VII

INDEMNIFICATION

Section 701: Reimbursement in Respect of Certain Litigation.

If the Developer shall be adjudged to be in violation of its obligations hereunder, the Developer shall pay all reasonable costs, expenses, judgments, decrees or damages and the amounts of all judgments and decrees which may be incurred by the City or Authority in any proceedings brought to enforce the obligations of the Developer, as set forth in the provisions of this Agreement, but only in the event, and to the extent, that the City or Authority so prevails. It is expressly understood, however, that any mortgagee, designee or other purchaser under any mortgage permitted hereunder shall not be liable to the Authority hereunder for any costs, expenses, judgments, decrees or damages which shall have accrued against the Developer of such Phase except that a mortgagee who becomes a mortgagee after, and who acquires title to such Phase after, the Developer has become liable for any costs, expenses, judgments, decrees or damages, notice of which have been duly recorded in Suffolk Registry of Deeds, shall take subject to

(but not be personally liable for) such costs, expenses, judgments, decrees and damages associated with such Phase.

ARTICLE VIII

INSURANCE

Section 801: Insurance Coverage.

a. With respect to each Phase, until the Covenant Expiration Date for such Phase, the Developer of such Phase shall keep the Improvements and personalty used in connection therewith insured by fire and extended coverage insurance and additional risk insurance to the same extent and amount which is normally required by institutional mortgagees with respect to similar properties in the City. Such insurance shall be in an amount sufficient to comply with the co-insurance clause applicable to the location and character of the Improvements or equipment, and, in any event, in amounts not less than eighty per cent of the then current replacement cost of such Improvements or equipment. Such replacement cost shall be agreed annually by the Developer and the insurer and, upon request by the Authority, a certificate thereof shall be delivered to the Authority. All such insurance shall be in standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts, and shall have attached thereto a clause making the loss payable to the Developer, any mortgagees, and, subject to the rights of the Developer and the mortgagees, the Authority, all as

their respective interests may appear. The inclusion of the Authority as a loss payee under insurance policies to be maintained by the Developer shall at all times be subordinate to, and shall in no way affect, the rights of any mortgagee named as a loss payee to apply the proceeds of insurance, at the election of such mortgagee, either (i) first, to the repair and reconstruction of the Improvements to the satisfaction of such mortgagee, with any balance of the insurance proceeds after the completion of such repair and reconstruction to be applied to the repayment or reduction of the mortgage indebtedness, with any remaining balance to be paid to the Developer and the Authority, as their respective interests may appear, or (ii) first, to the repayment of any mortgage indebtedness, with any remaining balance to be paid to the Developer and the Authority as their respective interests may appear.

b. Each insurance policy shall be written to become effective at the time the Developer becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Developer is subject to such risk or hazard.

c. Certificates of such policies and renewals shall be filed with the Authority at least thirty (30) days prior to the expiration of current coverage.

Section 802: Non-Cancellation Clause.

All insurance policies shall provide that any cancellation, change or termination thereof shall not be effective with respect to the Authority until after at least thirty (30) days prior written notice has been given to the Authority to the effect that such insurance policies are to be cancelled, changed or terminated at a particular time.

Section 803: Procurement of Insurance if Developer Fails to do so.

If the Developer at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the Authority at its option, may procure or renew such insurance, and all amounts of money paid therefor by the Authority shall be payable by the Developer to the Authority, with interest thereon at the rate of twelve per cent (12%) per annum from the date the same were paid by the Authority to the date of payment thereof by the Developer. The Authority shall notify the Developer, in advance, in writing of the date, purposes, and amounts of any such payments made by it.

Section 804: Developer's Obligations with Respect to Restoration and Reconstruction.

a. Whenever any Improvements, or any part thereof, shall have been damaged or destroyed prior to the Covenant Expiration

Date for the particular Phase, the Developer shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claims and any other monies provided for the reconstruction, restoration or repair of any such Improvements shall, to the extent in excess of \$250,000 (such amount to be increased from time to time by percentage increases in an index reasonably reflecting construction cost increases after the date hereof) and unless otherwise required to be distributed by any mortgagee, be deposited in a fully separate account of the Developer or held by the mortgagee holding a first mortgage on such Improvements (or such other institutional holder as the Authority may approve), for application, in accordance with then customary institutional construction loan requirements and procedures, to or toward the payment of such reconstruction, restoration or repair, subject, however, to the provisions of subsection (a) of Section 801.

b. The insurance proceeds so collected shall be used and expended, subject to the provisions of Section 801(a) hereof, for the purpose of fully repairing or reconstructing the Improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction to the extent that such insurance money and other proceeds may permit. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Developer,

subject to the rights of any mortgagees of record permitted hereunder and the rights of the Authority.

c. The Developer, with the written approval of the Authority (which shall not be unreasonably withheld) and any mortgagees of record permitted hereunder (if required under the mortgage) may determine that all or any part of any such damage to or destruction of a Phase shall not be reconstructed, restored, or repaired, and in such event, the proceeds of any claims against insurers or others arising out of such damage or destruction, to the extent not used for reconstruction, restoration, or repair shall be retained by the Developer, subject to the rights of such mortgagees and the Authority.

d. Any reconstruction or repair undertaken pursuant to the provisions of this Section shall in all material respects be in accordance with and conform to the provisions of the PDA/DIP Master Plan, the PDA Development Plan, the PDA Cooperation Agreement, the Development Review Procedures, the Drawings and Specifications and any approved Change Orders, and the provisions of this Agreement, or as otherwise approved by the Authority.

e. In no event shall the Developer be obligated to incur costs for repair and reconstruction in excess of the proceeds, if any, received from claims which may have arisen and been settled against the insurers on account of damage or destruction for construction, restoration or repair and which the mortgagees

permit to be used therefor. To the extent that insufficient monies are received, the Developer's obligation to reconstruct, restore or repair shall be reduced or eliminated, provided that any such reduced reconstruction, restoration or repair shall be subject to approval by the Authority with respect to the external appearance of open spaces, pedestrian walkways, courtyards and landscaping, or the external appearance of any building (including roof and penthouse). Developer agrees to exercise all reasonable efforts to obtain permits necessary to reconstruct, restore or repair such Improvements, but Developer shall in no event be obligated under this Agreement to reconstruct, restore or repair such Improvements if applicable laws or regulations do not allow the same to be accomplished or if applicable permits, licenses, approvals and the like cannot be obtained.

Section 805: Commencement and Completion of Reconstruction.

Subject to the foregoing, the Developer shall commence to reconstruct or repair the Improvements and equipment included in such Phase which have been destroyed or damaged prior to the Covenant Expiration Date applicable thereto, within a period not to exceed six (6) months after the insurance proceeds with respect to such destroyed or damaged property have been received by the Developer or any mortgagee which will make such proceeds available therefor (or, if the conditions then prevailing require a longer period, such longer period as the conditions shall mandate), and

shall diligently and with reasonable dispatch prosecute such reconstruction or repair to completion. If and to the extent that, from time to time the Developer demonstrates that it is unable, for reasons beyond its control (which may include without limitation, strikes or unforeseen construction delays, unfavorable leasing or construction markets, litigation or inability to obtain governmental approvals, permits, licenses, variances, exceptions and the like) to commence or complete such reconstruction or repair within such period, the Authority shall, from time to time, extend the time for commencement or completion thereof. Notwithstanding the foregoing, such reconstruction or repair shall in any event be completed within twenty-four (24) months after the start thereof, or such longer period as is reasonably required therefor.

ARTICLE IX

RIGHTS, REMEDIES AND PROCEDURES IN THE EVENT OF A DEFAULT BY DEVELOPER

Section 901: Default by Developer re Design Procedures, Construction, and Transfers.

Except for the provisions of Section 905, the default provisions of this Article IX shall cease to apply to a Phase Parcel and the Improvements thereon once a Certificate of Completion has been issued for such Phase.

If after delivery of the Deed, the Developer shall fail or refuse to commence, diligently pursue or complete construction of a particular Phase in accordance herewith, to comply with the Development Review Procedures applicable thereto, or if there is any unauthorized change in the legal and beneficial interests of the Developer with respect to ownership of such Phase as provided in Section 501, the Authority shall notify the Developer in writing of any such default (the "Default Notice"). The Developer shall thereupon have 90 days from the receipt by it of such written notice to cure such default provided if such default cannot be cured within said 90 days, so long as the Developer shall commence to cure and diligently proceed to cure thereafter, the Developer shall have an additional 90 days (for a total of 180 days) from the receipt by it of such written notice to cure such default.

a. If the Developer does not cure such default within the 180-day period (or within such extended period of time as may be established by the Authority acting solely in its discretion) or where cure requires more than 180 days if the Developer does not promptly begin such cure and thereafter diligently prosecute the same to completion, and if the then holders of mortgages on the particular Phase Parcel do not exercise their rights to cure such default (as provided in Section 903 hereof), an Event of Default shall be deemed to exist.

At any time after the occurrence of an Event of Default, but only for so long as the same remains uncured, the Authority may invoke the remedies under Section 901(a) and Section 901(b) with respect to such Phase on account of such Event of Default at any time within a two-year period after the date of the Default Notice. The Authority shall be deemed to "invoke its remedies hereunder" with respect to such Phase upon the earlier of a written demand for conveyance or reconveyance thereof pursuant to this Agreement or reentry in accordance with Section 901(b). Failure of the Authority timely to invoke its remedies shall be deemed a waiver of the particular Event of Default and of the Developer's obligations herein which underlie such Event of Default with regard to the particular Phase.

(i) If an Event of Default relating to any Phase occurs prior to the commencement of any substantial construction of such Phase (demolition and surface site work shall not be considered substantial construction, but the good faith commencement of excavation, foundation and other subsurface work shall constitute substantial construction), then the Authority's sole remedy shall be to cause a reconveyance of the particular Phase Parcel to the Authority and/or, at the election of the Authority, to terminate the rights of the Developer with respect to all Phase Parcels not yet conveyed to the Developer (the "Unconveyed Phase Parcels") pursuant to this Section 901(a) and the related provisions of this Article IX and this Agreement shall terminate and be null and void

with respect to such Phase Parcel (or such Unconveyed Phase Parcels) without further rights, obligations or recourse to the parties, except that the provisions of Sections 901(c) and (d) shall not terminate.

(ii) If an Event of Default relating to any Phase occurs after commencement of substantial construction of such Phase, then the Authority's sole remedy shall be to institute such actions and proceedings as may be appropriate against the Developer of the Phase in question, including actions to compel specific performance and payment of all damages, expenses and costs (subject to the provisions of Section 905). The provisions of this subsection (ii) shall apply separately to each Phase.

To the extent that the Authority invokes the remedy provided in subsection (i) herein, the Developer shall promptly transfer possession of, and convey to the Authority by Quitclaim Deed the particular Phase Parcel, in its "as is" condition, provided that such conveyance shall be subject only to any existing mortgages thereon and other encumbrances permitted under this Agreement. If the Developer shall fail so to convey, the Authority may institute such actions or proceedings as it may deem advisable as well as proceedings to compel specific performance and the payment of damages, expenses and costs by the Developer.

b. In the event of an Event of Default herein, the Authority shall also have the right to reenter and take possession of the particular Phase Parcel and to terminate (and revest and vest

in the Authority) the fee simple estate therein in the title condition described in Section 901(a), it being the intent of this, together with other provisions of this Agreement, that the conveyance of any Phase Parcel to the Developer shall be made upon a condition subsequent to the effect that in the event of such an Event of Default prior to the commencement of substantial construction of the Improvements on such a Phase Parcel, the Authority at its option may declare a termination in favor of the Authority of the title to, and of all the rights and interests in, such Phase Parcel; and that such title, and all rights and interests of the Developer, and any assigns or successors in interest, in such Phase Parcel shall revert to the Authority; provided, that such condition subsequent and any reversion of title as a result thereof in the Authority shall always be subject to and limited by and shall not defeat, render invalid, or limit in any way the lien of any mortgage authorized by this Agreement, or any rights or interests provided herein for the protection of the holders of such mortgages.

c. If the Developer or a mortgagee reconveys to the Authority, pursuant to Section 901(a)(i), Section 905, or Section 503(a)(3) or if title reverts in the Authority pursuant to Section 901(b), the Authority shall, subject to Developer's Rights of Refusal described in Section 901(d), undertake with due diligence and in a commercially reasonable manner to resell the particular Phase Parcel under Section 901(a)(i) or so much thereof as has

been so reconveyed or which it has so re-entered, under Section 905 or Section 503(a)(3), and all Improvements thereon. In preparation for resale, the Authority shall consult with, and consider suggestions of, the Developer and any mortgagee as to methods and strategies of maximizing the net proceeds from the resale of the particular Phase Parcel or portion thereof in question. The Authority may attempt to resell the particular Phase Parcel or portion thereof in question in an "as is" condition, and shall have no obligation to spend any funds in order to prepare the particular Phase Parcel or portion thereof in question, for resale. The resale shall be for cash only unless the first mortgagee of record otherwise directs or approves. The proceeds of such resale, together with the net income, if any, derived by the Authority from its operation and management of the particular Phase Parcel or portion thereof in question, subsequent to such reconveyance shall be used:

- (1) First, to pay all taxes, payments in lieu of taxes, public charges and other sums owing to the City, except for development impact project contributions and grants (as described in Section 901(c)(5) hereof), with respect to the particular Phase Parcel or portion thereof in question, and the Improvements thereon up to the time of such reconveyance (or in the event the particular Phase Parcel or portion thereof in question, and the Improvements thereon, are exempt from taxation during the

period of ownership thereof by the City, an amount equal to such taxes as would have been payable if the same were not so exempt);

- (2) Second, in their respective order of priority to pay any and all mortgage indebtedness permitted or authorized by this Agreement and encumbering the particular Phase Parcel or portion thereof in question (including, but not limited to, accrued and unpaid interest and other amounts payable thereunder);
- (3) Third, to pay all development impact project contributions and grants (the heretofore agreed to payments pursuant to Articles 26A and 26B of the Code) owing to the City with respect to the Improvements on the particular Phase Parcel or portion thereof in question up to the time of such reconveyance;
- (4) Fourth, in their respective order of priority, to pay any and all amounts to be paid to entities except Developer (but not excepting equity contributions from partners or affiliates of partners within Developer other than RUGGLES), representing equity contributions utilized in the development and construction of the particular Phase Parcel or portion thereof in question as provided in Section 1101(a) (including, but not limited to, accrued and unpaid interest and other amounts payable thereunder);

- (5) Fifth, in their respective order of priority, to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on the particular Phase Parcel or portion thereof in question, or the Improvements thereon, in favor of mechanics, materialmen or subcontractors;
- (6) Sixth, to reimburse the Authority for (i) all out-of-pocket third party expenses reasonably and proximately incurred by the Authority, including legal, management, brokerage, and repair costs, in connection with the recapture, management, conservation, construction and reconveyance of the particular Phase Parcel or portion thereof in question and the Improvements thereon and (ii) all so-called "internal" costs and expenses reasonably and proximately incurred by the Authority, including the salaries of the Authority personnel reasonably related to the direct administration and supervision of the particular Phase Parcel, in connection with the recapture, management and resale of the particular Phase Parcel or portion thereof in question or the Improvements thereon and all administrative and overhead costs in connection therewith;
- (7) Seventh, to pay or reimburse the Authority for any amounts otherwise owing to the Authority in connection

with the particular Phase Parcel or portion thereof in question, from the Developer;

- (8) Eighth, to reimburse the Developer for 100% of the "Total Development Cost" allocable to the particular Phase Parcel or portion thereof in question and the Improvements thereon plus an amount calculated at the compounded annual rate of 12.75% on 100% of the Total Development Cost allocable to the particular Phase Parcel or portion thereof in question and the Improvements thereon from the times incurred through the times said cost is reimbursed under this clause (8) of this Section. "Total Development Cost" means the amount expended by the Developer in the purchase of the particular Phase Parcel or portion thereof in question and the development and construction of the Improvements and any operating deficits incurred (including interest costs incurred) prior to the month in which the gross income derived from the Phase or portion thereof in question equals or exceeds all the expenses for the Phase or portion thereof in question (including interest expense) (the "Breakeven Date") thereon less any profit theretofore realized by the Developer from the disposition of any interest therein or in any part or parcel thereof, and less any net income in excess of net losses realized by the Developer after the Breakeven

Date from its use of the particular Phase Parcel or such interest therein; and

- (9) Ninth, any balance remaining shall remain the property of the Authority.

d. The Developer shall have the following rights of refusal prior to any resale or other disposition by the Authority with respect to each and every Phase Parcel and the Improvements thereon under this Article IX after an Event of Default. Prior to entering into any transaction with a third party for reconveyance or other disposition of any Phase Parcel and the Improvements thereon under this Article IX on terms relating to the required development thereof which differ in any material respect from the requirements imposed on Developer with respect thereto hereunder (the "Revised Development Conditions"), the Authority shall first reoffer the particular Phase Parcel and the Improvements thereon to the Developer for at least a one-month period on the Revised Development Conditions. If Developer accepts such reoffer within such one-month period, the particular Phase Parcel and the Improvements thereon shall be reconveyed by the Authority to the Developer or its designee (subject to the approval of the Authority as permitted by the terms of Article V hereof) subject to the Revised Development Conditions which shall be substituted for the corresponding terms of this Agreement, and the PDA Cooperation Agreement shall, if necessary, be revised accordingly, unless the Authority in good faith determines that Developer is not ready,

willing and able to develop the particular Phase Parcel in accordance with the Revised Development Conditions. If Developer does not exercise its rights within such one-month period, the Authority shall be free to reconvey or redispense of the particular Phase Parcel, free of Developer's Rights of Refusal hereunder, at any time within one year after the date of the reoffer to Developer on terms which are no more favorable to the buyer or lessee than the Revised Development Conditions offered to Developer hereunder. If the Authority does not so reconvey, the Developer's Rights of Refusal shall apply prior to any subsequent reconveyance or redispositions based on Revised Development Conditions. The Authority's determination, in the exercise of its reasonable judgment, as to whether Revised Development Conditions exist or as to whether the Authority's reconveyance or redispense is on terms which are no more favorable to the buyer or lessee than the Revised Development Conditions offered to Developer hereunder shall be conclusive if such determination is made in good faith.

e. The provisions of this Section 901 with respect to each Phase Parcel shall terminate upon the issuance of a Certificate of Completion for such Phase Parcel.

Section 902: Notices of Default to Mortgagees.

If the Authority gives written notice to the Developer of a default under this Agreement, the Authority shall forthwith

furnish a copy of the notice to each of the mortgagees of record of the particular Phase Parcel. Failure to provide any such mortgagee with a copy of such notice shall render such notice invalid and ineffective. To facilitate the operation of this Section, the Developer shall at all times keep the Authority provided with an up-to-date list of names and addresses of mortgagees from whom the Developer has obtained loans secured by mortgages upon any Phase Parcel as permitted under this Agreement. Any such mortgagee or holder may notify the Authority of its address and request that the provisions of Section 1306 as they relate to notices apply to it. The Authority agrees to comply with any such request.

Section 903: Mortgagee May Cure Default of Developer.

If the Developer has received notice from the Authority of a default under this Agreement with respect to a particular Phase Parcel and such default is not cured by the Developer before the expiration of the period provided therefor, any holder of record of a permitted mortgage on the particular Phase Parcel may cure, as permitted under this Agreement, such default by giving written notice of its intention to do so to the Authority within ninety (90) days after the expiration of the period provided for Developer's cure thereof, and shall thereupon proceed with due diligence to cure such default. Any cure of a default hereunder

by a mortgagee shall be deemed a cure of said default by Developer.

If any mortgagee elects so to cure any default, a reasonable extension of time for performance will be granted by the Authority to enable the mortgagee, and its transferee, to obtain possession and control of the particular Phase Parcel, by foreclosure or otherwise, and to correct such default, to satisfy the provisions of this Agreement, and to complete construction of the Improvements on the particular Phase Parcel to the extent that the Developer, such mortgagee or its transferee will be entitled to receive a Certificate of Completion hereunder. In any event, so long as the mortgagee or its transferee is diligently pursuing a cure of the default, the Authority shall not invoke any of its remedies hereunder.

Section 904: Cross Easements.

If the Authority invokes its remedy under Section 901(a), or the Developer or a mortgagee reconveys to the Authority pursuant to Section 905 or Section 503(a)(3) a portion, but less than all of the Property, then the Developer and the Authority agree each to grant easements to the other as may be required and appropriate for the construction and operation of the Phase Parcels owned by each party. This provision shall survive until such time as a Certificate of Completion has been issued for all Phase Parcels.

Section 905: Remedies for Other Defaults.

It is understood by the parties hereto that in the event any party shall fail to comply with or violate any of the provisions of this Agreement, then, except for defaults as provided in Section 202, Section 211, and Section 901(a)(i) as to which the remedies prescribed therein are exclusive, any other party hereto may institute such actions and proceedings as may be appropriate, including actions and proceedings to compel specific performance and payment of all damages, expenses, and costs, provided however that in lieu of actions and proceedings by the Authority to compel specific performance by Developer to complete construction of the Improvements on a particular Phase Parcel, the Developer may elect to convey to the Authority the particular Phase Parcel, by Quitclaim Deed subject only to any existing mortgages and other encumbrances permitted under this Agreement (in which case the provisions of Section 901(c) and (d) shall apply). Any such actions or proceedings by the Authority shall relate only to the particular Phase Parcel, and to such other Phase Parcels as the Authority may designate provided that the Authority shall not be permitted, and shall have no right to bring any such actions or proceedings, against any other Phase Parcel which has been purchased by the Developer prior to the commencement of any such action or proceeding, it being the intent hereof that, except as otherwise expressly provided herein, the remedies provided herein (except as specifically provided otherwise) shall apply separately

to each Phase Parcel, and that any default by the Developer with respect to a particular Phase Parcel under any paragraph or provision of this Agreement shall not be deemed a default by the Developer as to any other Phase Parcel, which has been purchased by the Developer prior to the occurrence of such default. Neither these remedies nor that class of remedies more particularly described in this Agreement shall be exclusive unless specifically so described, provided, however, that the remedies prescribed in Section 901 for the defaults therein described respecting reconveyance are exclusive and that no other rights of reconveyance are to be implied hereunder. The provisions of this Section 905 with respect to each Phase Parcel shall survive issuance of a Certificate of Completion hereunder but shall terminate upon the Covenant Expiration Date for such Phase Parcel.

ARTICLE X

DESIGNATION CONDITIONS

Section 1001: Compliance with Designation Conditions; Linkage.

a. The Developer shall at all times proceed hereunder in substantial conformity with the Designation Conditions. The Designation Conditions shall, at Developer's request, from time to time, be reviewed by the Authority to the extent that Developer is unable to conform therewith by reason of applicable legal requirements or changed legal circumstances or other matters beyond the

control of the Developer. Decisions made by the Authority pursuant to this Section 1001 after good faith reasonable attempts to preserve the essential rights and obligations of the parties shall be conclusive. Where any Designation Condition is inconsistent with this Agreement, the provisions of this Agreement shall govern. Otherwise, the provisions of this Agreement shall supplement, but not supersede, the Designation Conditions.

b. Among other things, one Designation Condition is that the Developer is required to comply with certain so-called "linkage policies". Linkage policies for the City of Boston are contained in Articles 26A and 26B of the Boston Zoning Code. Additionally, linkage policies which pertain particularly to the development of the Property are contained in the DIP Agreement and the PDA Cooperation Agreement. Prior to the execution of this Agreement, the Developer and the Authority have entered into the DIP Agreement and the PDA Cooperation Agreement which set forth the agreements of the Developer in compliance with the linkage policies contained in Articles 26A and 26B and with the requirements of the Community Benefits Phase in the Designation Conditions.

ARTICLE XI

CONDITIONS PRECEDENT TO CERTAIN CONSTRUCTION

Section 1101: Conditions Precedent to Certain Construction.

As conditions precedent to the commencement of construction of the Improvements on a particular Phase Parcel, the Developer shall satisfy the following conditions (which, if not satisfied by the relevant Construction Commencement Date, shall constitute a default for which provisions of Section 901 apply):

a. Not later than commencement of construction of each Phase, Developer shall submit to the Authority a copy (certified by Developer to be true and correct) of a firm commitment, issued by a lender which is reasonably satisfactory to the Authority and which is an Institution as herein defined, whereby such lender agrees to furnish construction financing for the Improvements contained in the Drawings and Specifications for such Phase together with evidence satisfactory to the Authority that Developer has demonstrated, to the satisfaction of such lender, the availability of equity capital which, when combined with the financing to be provided by such lender is adequate to complete the Improvements for such Phase (and any off-site improvements associated therewith) in accordance with the requirements of this Agreement, provided however that, in place of the above, the Developer may submit to the Authority evidence satisfactory to the Authority that the Developer will use its own resources to finance construction of the Improvements for such Phase. Such commitment

shall be accompanied by such further materials as the Authority may reasonably request evidencing satisfaction of, or Developer's ability to satisfy, the conditions to lending therein set forth.

Institution shall mean any one of the following:

(i) a bank, insurance company, savings and loan association, credit corporation, trust company or a corporation, trust or association qualifying as a real estate investment trust under the provisions of Section [856] of the Internal Revenue Code of 1986 (or like future provisions of such Code) chartered under the laws of the United States of America or any State thereof, and with a principal place of business in one of such States and a combined capital and surplus account (or, in the case of a mutual company, the equivalent thereof) of not less than \$400,000,000.

(ii) an educational institution with a capital endowment of not less than \$400,000,000.

(iii) a pension fund established by and for any business corporation or corporations, or by and for any group of employees of a governmental body or of a religious or educational institution or for any trade union, and, in each case, having a net worth, determined in accordance with sound, conservative accounting practice, of not less than \$400,000,000.

(iv) any combination of the foregoing with a combined net worth, capital and surplus account, capital endowment and the like of not less than \$400,000,000.

b. Not later than commencement of construction of each Phase, Developer shall submit to the Authority:

(i) Reasonable evidence of the capability and engagement of the Architect and Contractor engaged by Developer for the construction of the Improvements shown and described in the Drawings and Specifications for such Phase, of undertaking the work on such Phase and the engagement of such Architect and Contractor to undertake the work on such Phase.

(ii) A copy of a building permit issued by the Inspectional Services Department of the City of Boston fully covering the Improvements for such Phase, together with evidence satisfactory to the Authority that all fees in connection therewith have been paid.

(iii) A copy of a performance and payment bond or other assurance of completion of the Improvements for such Phase satisfactory in form and amount to the Authority.

Notwithstanding the foregoing, if the construction mortgagee for the particular Phase accepts some form of completion assurance, other than a general performance and payment bond, the Authority shall accept such form of assurance hereunder with the Authority named as co-obligee with such mortgagee.

The Developer of each Phase shall at all times keep the Authority fully and currently advised of the status of all aspects of Developer's progress in meeting the conditions of this Agreement with respect to the development of the particular Phase, including, without limiting the generality of the foregoing, development of the Design Documentation, securing of construction financing, and arrangements for construction. All contracts entered into by Developer respecting the development of a particular Phase shall obligate the parties to act in a manner consistent with the appropriate obligations of Developer under this Agreement. During the implementation of any such contracts the Authority shall have the right to review all aspects of the work performed thereunder, so long as such review does not interfere with the process of construction, in order to insure that such work is being undertaken in a manner consistent with the obligations of Developer under this Agreement. Notwithstanding any other provision of this Agreement, a default with respect to a particular Phase Parcel shall never be deemed a default with respect to any other Phase Parcel which has been purchased or leased by the Developer prior to the occurrence of such default.

ARTICLE XII

ANTI-DISCRIMINATION; HIRING

Section 1201: Anti-Discrimination; Hiring.

The Developer agrees that in the construction of each Phase, and otherwise through the Covenant Expiration Date for each Phase, it shall comply and shall in good faith cause all contractors, tenants and users of the particular Phase to comply with all applicable laws, ordinances, regulations and orders from time to time in effect relating to nondiscrimination, equal employment opportunity, contract compliance and affirmative action.

Section 1202: Employment Plan. [REVIEW]

In connection with the construction of each Phase, Developer shall submit an Employment Plan, which shall set forth in detail the Developer's "Best Efforts," as those efforts are defined by Ch. 12 of the Ordinances of 1986, the so-called "Boston Residents Job Policy" to ensure that its contractor and those engaged by said contractor for construction of each Phase shall comply on a craft by craft basis with the standards set forth in the [PDA Cooperation Agreement.] The Plan shall include provisions for monitoring, compliance and sanctions.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

Section 1301: Obligations and Rights and Remedies Cumulative and Separable.

The respective rights and remedies of the Authority and the Developer provided by this Agreement or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies.

Section 1302: Amendment.

This Agreement and the Instruments incorporated herein shall constitute the entire agreement among the parties hereto as to the subject matter hereof; it may be amended only by an instrument in writing signed by the Authority and the Developer, and approved by any mortgagee permitted hereunder.

Section 1303: Severability.

The provisions of this Article are severable, and if any such provision or the application of such provision shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions of this Agreement which shall remain in full force and effect.

Section 1304: Time of Essence; Covenants to be Enforceable.

Time is of the essence in the performance of this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them and shall diligently, promptly and punctually fulfill the conditions applicable to each of them.

The covenants herein contained relating to each Phase Parcel, which are expressly stated to be separate covenants running with the land, shall be stated or incorporated by reference in any instrument of conveyance or lease relating to the particular Phase Parcel or any portion thereof or any interest therein and shall in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, the Authority against the Developer (including its successors and assigns to or of the particular Phase Parcel, the Improvements thereon, or any interest therein and any party in possession or occupancy of the particular Phase Parcel, the Improvements thereon or any part thereof). In amplification, and not in restriction of the provisions hereof, it is intended and agreed that the Authority shall be deemed the beneficiary of such covenants, both for and in its own right and also for the purposes of protecting the interests of the community

and the other parties, public or private, in whose favor or for whose benefit such covenants have been provided.

Section 1305: City and Authority Staff and Officers Barred From Interest.

a. No member, official or employee of the City and the Authority shall have any personal interest, direct or indirect, in this Agreement or the Developer, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official or employee of the City or the Authority shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the City or the Authority for any amount which may become due to the Developer or to its successor or on any obligations under the terms of this Agreement.

b. The Developer covenants that it has not employed or retained any company or person (other than a full-time bona fide employee working for the Developer and a party working for the Developer pursuant to a contract) to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person (other than such an employee or party) any gift, contribution, fee, commission, percentage, or brokerage fee, contingent upon or resulting from the execution of this Agreement.

Section 1306: Approvals and Notices. [REVIEW]

Where the consent or approval of the Authority is required hereunder, such consent or approval shall not be unreasonably withheld, but the same shall be valid and binding only if given in a writing which is signed by a duly authorized official, provided however that whenever this Agreement requires that an approval or disapproval be given within a specified time period, a failure to approve or disapprove within said period shall be deemed a valid and binding approval thereof, but only if requirements hereof of the notice and request for approval have been complied with by Developer. Any reference in this Agreement to the number of days within which any action must be taken by any party hereto shall mean (i) business days when the number of days is 30 or less and (ii) calendar days when the number of days is more than 30.

Notices shall be deemed given when deposited in the United States mail and sent registered or certified mail, postage prepaid, to the principal office of the party to whom it is directed, which is initially as follows:

Developer:	Ruggles Center Joint Venture c/o Metropolitan/Columbia Plaza Venture 125 Summer Street Boston, MA 02110
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with a copy to: David Marc Drew, Esq.
Metropolitan Structures
111 E. Wacker Drive, Suite 1200
Chicago, Illinois 60601

with a copy to: Joel H. Sirkin, Esq.
Hale and Dorr
60 State Street
Boston, MA 02109

with a copy to: Fletcher H. Wiley, Esq.
Wiley & Richlin, P.C.
75 Arlington Street, Suite 1010
Boston, MA 02116

with a copy to: William D. Chin, Esq.
3 Center Plaza
Boston, MA 02108

Authority: Boston Redevelopment Authority
City Hall Square
Boston, MA 02201
Attn: Director

with a copy to: Boston Redevelopment Authority
City Hall Square
Boston, MA 02201
Attn: Chief General Counsel

The parties shall promptly notify each other of any change of their respective addresses set forth above.

Any requests for approvals made by Developer to the City or Authority where such approvals shall be deemed granted after a period of non-reply by the City or the Authority shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in bold face type:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY

FAILURE TO RESPOND WITHIN _____ DAYS

SHALL RESULT IN AUTOMATIC APPROVAL"

Notice and other communications to mortgagees shall be deemed given when deposited in the United States mail and sent registered or certified mail, postage prepaid, to the last known address of the party concerned.

Section 1307: Matters to be Disregarded.

The index to and titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 1308: Obligations to Continue.

Except as to obligations expressly or by clear implication required to be performed at or prior to the time of Closing of the sale and conveyance of title to and delivery of possession of a particular Phase Parcel, and except as otherwise herein expressly provided with respect to issuance of the Certificate of Completion, the provisions of this Agreement and each of the Instruments, except as otherwise expressly provided therein, shall survive the time of Closing and the sale and conveyance of title

to and the delivery of possession of the Phase Parcel to the Developer until the Covenant Expiration Date for the particular Phase Parcel. Thereafter, upon notice by Developer or any mortgagee requesting the Authority to provide an instrument suitable for recording acknowledging the expiration of this Agreement, including the covenants herein contained, and of the Instruments as to such Phase Parcel, the Authority shall provide such an instrument to the Developer or mortgagee, as the case may be, which instrument, when executed by the Authority and recorded with the Suffolk Registry of Deeds, shall conclusively establish the expiration of this Agreement, including said covenants, and the Instruments, except as otherwise expressly provided therein, as to the particular Phase Parcel. Upon the failure of the Authority to supply such instrument within _____ of such request, the Developer or mortgagee may record an affidavit with said Deeds attesting to the expiration of the covenants contained herein, this Agreement and the Instruments which, upon recording with said Deeds, shall conclusively establish the expiration of said covenants, this Agreement and the Instruments, except as otherwise expressly provided therein, as to the particular Phase Parcel.

Section 1309: Excusable Delays.

For the purposes of any of the provisions of this Agreement, neither the Authority nor the Developer, as the case may be, shall

be considered in default of its obligations hereunder in the event of unavoidable delay in the performance of such obligations if due to causes beyond its control and not due to its fault or negligence, including but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, or other casualties, epidemics, quarantine restrictions, labor disputes, litigation, freight embargoes, and unusually severe weather or delays of contractors and subcontractors due to such causes; it is the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such party shall be extended for the period of the enforced delay, provided, that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other party thereof in writing stating the cause or causes thereof and requested an extension for the period of the enforced delay. In calculating the length of the delay, and the Authority shall consider not only actual work stoppages but also any consequential delays resulting from such stoppages as well. In no event shall any inability to secure a building permit (unless caused by the City, the Authority or matters beyond the Developer's reasonable control) or financing difficulty be a cause for an extension under this Section 1309.

Section 1310: Agreement Binding on Successors and Assigns.

The respective provisions of this Agreement, in accordance with their terms, shall be binding upon, and shall inure to the benefit of the successors and assigns of the Developer of each Phase Parcel and any public body succeeding to the interests of the City or the Authority.

Section 1311: Limitation of Developer's Liability.

The liability of the Developer under this Agreement and under guaranties, covenants, certifications and the like delivered pursuant hereto with respect to each Phase shall be limited solely to the assets and property of the Developer with respect to such Phase, but in any event not to exceed, in the aggregate, five hundred thousand dollars (\$500,000.00), and no partner, venturer, trustee, beneficiary, shareholder, officer, director or the like of the Developer, from time to time, or any such person's or entity's separate assets or property shall have or be subject to any personal liability with respect to any obligation or liability of the Developer hereunder or thereunder. A deficit capital account of a partner of the Developer shall not be deemed to be a liability of such partner nor an asset or property of the Developer. Nothing stated herein shall enlarge the remedies of

the Authority against the Developer for any default beyond those set forth in Article IX.

Notwithstanding anything else to the contrary contained herein or in the Instruments, liability arising under this Agreement, and under any Instrument in connection with a particular Phase shall be limited to the interest of the Developer in such Phase (including the proceeds and profits arising therefrom), but not to exceed \$500,000. No action for damages or equitable relief, including, without limitation, an action to compel specific performance, in connection with one Phase may be maintained against the Developer of any other Phase because of the Developer's interest in any such other Phase; it being intended and agreed that the liability of the Developer for a particular Phase shall be limited solely to the assets and property of the Developer with respect to such Phase only and to no other assets or property of such Developer, including without limitation no other assets or property relating to or derived from any other Phase.

Section 1312: Separation of Obligations and Liabilities Regarding Each Phase and Construction of Exhibits.

Notwithstanding anything else to the contrary herein or in the Instruments contained herewith, each and every obligation, covenant, responsibility and liability of the Developer set forth

in this Agreement, and in each of the Instruments shall, as relevant, apply separately to each Phase, and a default with respect to a particular Phase under any paragraph or provision of this Agreement or the Instruments shall not constitute a default with respect to any other Phase which has been purchased by the Developer prior to the occurrence of such default.

In case of any conflict between the provisions of this Agreement and any of the Instruments, the provisions of this Agreement shall govern, unless expressly provided otherwise in an Instrument.

Section 1313: Waivers.

Any right or remedy which the Authority or the Developer may have under this Agreement, or any of the provisions, may be waived in writing, without execution of a new or supplementary Agreement, but any such waiver shall not affect any other rights not specifically waived, and no waiver by the Developer of a right under Section 901 shall be effective unless approved in writing by everyone then entitled to be given notice under Section 902. The Authority, in writing, may waive any provisions herein contained for its benefit.

Section 1314: Sole Obligation of Authority and the City.

The sole obligation of the Authority hereunder shall be timely to perform their respective duties set forth hereunder with

respect to (i) approvals required of them, (ii) final designation of Developer, (iii) the performance of the covenants and obligations required of them, (iv) conveyance of the Property or Phase Parcels, (v) causing the funding and construction of the Public Plaza Improvements, (vi) causing of the MBTA to remove the Hazardous Wastes from the Property or Phase Parcels and (vii) any Conditions required of them. The Authority shall, however, fully cooperate with and publicly support Developer in reasonable efforts to satisfy each of the Conditions, including without limitation to obtain all permits, approvals and licenses from other governmental authorities of the City and State; provided, however, that neither the Authority nor the City guaranty the issuance of any such approvals; it being agreed that the obligations of the Developer set forth in this Agreement are expressly conditioned upon the active cooperation and public support by the Authority and the City of the Developer's efforts to obtain from the appropriate municipal and state bodies and agencies all such permits, approvals, and licenses which may be necessary or desirable in order to carry out the development of the Property in accordance with the PDA/DIP Master Plan.

Section 1315: Entire Agreement.

This Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject

matter hereof and supersedes all prior understandings and agreements with respect thereto, including without limitation the Development Agreement dated as of April 27, 1989 by and among the Authority, the MBTA and Metropolitan/Columbia.

Section 1316: Status Reports.

The Authority shall, within ten (10) days after written request therefor by the Developer or any mortgagee, provide a certificate in writing, as requested or applicable, that the Agreement or any particular section hereof or Exhibit hereto specified by the requesting party is in full force and effect and unmodified, or in what respects the Agreement is no longer in force or effect or has been modified, or that the Developer is in compliance with this Agreement or any particular section hereof or Exhibit hereto specified by the requesting party, or, in the case of any noncompliance, in what respects there is not compliance; or as to any other matter reasonably related to the Property or a Phase Parcel which the requesting party may reasonably request of the Authority. The Authority hereby authorizes the Director of the Authority to execute and deliver any such certificate on behalf of the Authority.

Section 1317: Termination. If, for any reason, the Closing Dates for all of the Phase Parcels comprising the Property have not

occurred on or before December 31, 1996, this Agreement and all rights and obligations of the parties hereto, except with respect to those Phase Parcels which have been conveyed to the Developer prior thereto (the "Conveyed Phase Parcels"), shall terminate and be null and void and the parties shall have no further rights, obligations or recourse with respect to any portion of the Property other than the Conveyed Phase Parcels. From and after such termination date, this Agreement and the rights and obligations of the parties hereto shall apply only to the Conveyed Phase Parcels which have been so conveyed to the Developer prior to such termination date. After the occurrence of such termination date, upon notice by any party or any mortgagee thereof (the "Requesting Party") requesting the other parties hereto (the "Responding Parties") to provide an instrument suitable for recording acknowledging the termination of this Agreement in accordance with this Section 1317, the Responding Parties shall provide such an instrument to the Requesting Party, which instrument, when executed by all parties thereto and recorded with the Suffolk Registry of Deeds, shall conclusively establish the termination of this Agreement in accordance with this Section 1317 except as the Conveyed Phase Parcels which have been conveyed to the Developer prior thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement in ____ counterparts to be signed, sealed and delivered

by their duly authorized officers or representatives, respectively
as of the day and year first above written.

APPROVED AS TO FORM:

BOSTON REDEVELOPMENT AUTHORITY

By _____
Chief General Counsel
Boston Redevelopment Authority

By _____
Director

Date of execution:

RUGGLES CENTER JOINT VENTURE, A
MASSACHUSETTS GENERAL
PARTNERSHIP

By _____

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston

, 1990

Then personally appeared before me the above-named Stephen
Coyle, Director of the Boston Redevelopment Authority, who
executed the foregoing Agreement on behalf of the Boston
Redevelopment Authority and acknowledged the same to be the free
act and deed of said Authority.

Before me,

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston

, 1990

Then personally appeared before me the above-named
_____ of Ruggles Center Joint Venture, a Mas-
sachusetts General Partnership, who executed the foregoing Agree-
ment on behalf of the Ruggles Center Joint Venture, a Mas-
sachusetts General Partnership and acknowledged the same to be the
free act and deed of said General Partnership.

Before me,

Notary Public

FIRST AMENDMENT TO
COOPERATION AGREEMENT

FOR

PLANNED DEVELOPMENT AREA NO. 35

ONE LINCOLN STREET

This Agreement made as of the day of , 1990
by and between the BOSTON REDEVELOPMENT AUTHORITY, a body politic
and corporate created pursuant to Chapter 652 of the Acts of 1960,
as amended, acting in its capacity as the planning board for the
City of Boston (the "Authority") and KINGSTON BEDFORD JOINT
VENTURE, a Massachusetts general partnership consisting of
Metropolitan Structures, an Illinois general partnership,
Columbia Plaza Associates, a Massachusetts general partnership,
and Metropolitan/Columbia Plaza Venture, a Massachusetts general
partnership, its successors and assigns (the "Applicant"); the
Authority and Applicant, collectively, shall be referred to herein
as the parties.

WHEREAS, the parties entered into a Cooperation Agreement for
Planned Development Area No. 35, dated September 11, 1989 (the
"Cooperation Agreement");

WHEREAS, the parties hereto desire to amend the Cooperation
Agreement as hereinafter set forth (the "Amendment"); and

WHEREAS, all capitalized terms not otherwise defined in this
Amendment shall have the meanings given to them in the Cooperation
Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties agree to amend the Cooperation Agreement as follows:

1. The last seven lines of subparagraph (a)(i) of Paragraph 12 of the Cooperation Agreement commencing with "sale of the Project" and ending with "Construction Agreement")." are hereby deleted and substituted with the following:

"KBE Sale (as defined hereinafter). For purposes of this Agreement, "KBE Sale" shall mean any transfer by the Applicant by deed or otherwise, except as set forth hereinafter, of more than fifty percent (50%) of the Applicant's legal or beneficial ownership interest in the Project provided that the granting of any mortgage by the Applicant in connection with any financing of the Project shall not constitute a KBE Sale nor shall any transfer by the Applicant to any mortgagee of the Project or those claiming through any mortgagee (whether by foreclosure or deed-in-lieu thereof) constitute a "KBE Sale".

2. The following words "and Paragraph 33" shall be inserted in the first line of subparagraph (b) of Paragraph 12 after the phrase "For purposes of this Paragraph 12".
3. The following paragraph is hereby added as Paragraph 33 to the Cooperation Agreement:
"33. The Applicant will contribute the additional

amounts described in subparagraphs (a) and (b) below to the parties described below in the manner described below as follows:

(a) \$100,000.00 shall be paid to the Dudley Street Neighborhood Initiative as follows: (x) \$50,000.00 upon the execution of the Sale Agreement and (y) \$50,000.00 at the time of the issuance of the KBE Certificate of Occupancy.

(b) A sum equal to \$3,150,000.00, plus interest calculated at the Interest Rate and for the Interest Period as provided in subparagraph (c) below, shall be payable, but only, if, and when, and to the extent, funds are available from Available Funds (as defined in subparagraph (g) below) subject to, and in accordance with the conditions herein, as follows:

(1) A sum equal to \$1,000,000.00, plus interest calculated at the Interest Rate and for the Interest Period as provided in subparagraph (c) below, shall be paid by the Applicant to the Parking Facilities Fund, created by §4 of Chapter 474 of the Acts of 1946, but only if, and when, and to the extent, funds are

available from Available Funds but not otherwise;

- (2) A sum equal to \$500,000.00, plus interest calculated at the Interest Rate and for the Interest Period as provided in subparagraph (c) below, shall be contributed by the Applicant to the City for the purpose of constructing a park on the site of the present 88 Kingston Street (excluding that portion of 88 Kingston Street necessary for the widening of Essex Street), the design of which park shall be subject to the joint approval of the Applicant and the Authority, but only if, and when, (i) Essex Street is widened, (ii) a cleared site is made available by the City to the Authority for purposes of constructing the park and (iii) only if, and when, and to the extent, funds are available from Available Funds after the payment in full of all monies due pursuant to subsection (1) above, but not otherwise;
- (3) A sum equal to \$650,000.00, plus interest calculated at the Interest Rate and for the Interest Period as provided in

subparagraph (c) below, shall be contributed by the Applicant to the City as a contribution toward the cost of land acquisition for the widening of Essex Street, but only, if, and when (i) Essex Street is widened and all street improvements in connection therewith are completed and (ii) only if, and when, and to the extent, funds are available from Available Funds after the payment in full of all monies due pursuant to subsections (1) and (2) above, but not otherwise; such that if funds are available from Available Funds and the conditions in clause (i) of subsection (3) have been satisfied but the conditions in clause (ii) of subsection (2) above have not been satisfied, then no funds shall be paid from Available Funds pursuant to this subsection (3) until such time as the conditions in clause (ii) of subsection (2) have been satisfied and all monies due pursuant to subsection (2) have been paid;

(4) A sum equal to \$1,000,000.00, plus interest calculated at the Interest Rate

and for the Interest Period as provided in subparagraph (c) below, shall be paid by the Applicant to the Community Development Trust but only if, and when, and to the extent, funds are available from Available Funds after the payment in full of all monies due pursuant to subsections (1), (2) and (3) above, but not otherwise; provided however, if funds are available from Available Funds and as of the Available Funds Expiration Date (as defined in subparagraph (h) below), the conditions in subsections (2) and/or (3) have not been satisfied such that no monies have been paid pursuant thereto, then on the Available Funds Expiration Date, funds shall be paid from Available Funds pursuant to this subsection (4).

- (c) For purposes of this Paragraph 33, the "Interest Rate" shall be eight and one-half percent (8.5%) per annum compounded annually, and the "Interest Period", for purposes of calculating accrued interest due under each of subsections (1) through (4) of subparagraph (b) above, shall be with respect to each subsection, the period commencing on the

earlier of (w) thirty-six (36) months after the issuance of the KBE Certificate of Occupancy or (x) the date of achievement of ninety percent (90%) occupancy of the Project and ending on the date upon which payment in full is made of all monies due pursuant to the applicable subsection.

(d) For purposes of this Paragraph 33, "Return" shall be a return on the equity invested in the Project by Applicant, as such equity is reduced or augmented from time to time, at an interest rate of two percent (2%) per annum above the interest rate of Applicant's financing for the Project. To the extent that Applicant does not realize its Return at any given time, such Return shall accrue and be added to Equity. Applicant shall also receive its Return prior to the reduction of its Equity.

(e) For purposes of this Paragraph 33, "Equity" shall be the equity contributed directly or indirectly to the Project by Applicant, as such Equity is reduced or augmented from time to time. To the extent that Applicant does not realize its Return at any given time then

such Return shall accrue and be added to Equity.

- (f) For purposes of this Paragraph 33, "Refinancing" shall mean the Permanent Financing and any financing thereafter replacing all or a portion of the then existing financing of the Project, except that Refinancing shall include the Permanent Financing only to the extent that said Permanent Financing exceeds total costs for the Project.
- (g) For purposes of this Paragraph 33, "Available Funds" shall mean only the following:
- (i) five percent (5%) of the Net Refinancing Proceeds from the Project, where "Net Refinancing Proceeds" is equal to all cash proceeds received by the Applicant from any Refinancing (as defined in subparagraph (f) above) ("Refinancing Proceeds") minus the sum of (w) all outstanding debt on the Project ("Debt"), (x) all costs, fees and expenses of the refinancing transaction including, but not limited to, costs, fees and expenses for brokerage, appraisal, legal, engineering, and professional services, penalties for prepayment of Debt, loan origination fees,

recording and bank applications ("Refinancing Costs"), (y) Return and (z) Equity. The foregoing is illustrated by the following:

Net Refinancing Proceeds =
Refinancing Proceeds - (Debt + Refinancing Costs + Return + Equity)

Available funds = 5% x Net Refinancing Proceeds

and

(ii) five percent of the Net Sale Proceeds from the Project, where "Net Sale Proceeds" is equal to all cash proceeds received by the Applicant from the KBE Sale ("Sale Proceeds") minus the sum of (y) Debt, (w) debt service payable with respect to the Project for the calendar year during which the KBE Sale occurs ("Current Debt Service"), (x) all costs, fees and expenses of the sale transaction including, but not limited to, costs, fees and expenses for brokerage, appraisal, legal, engineering, and professional services, penalties for prepayment of Debt, and deed stamps ("Sale Costs"), (y) Return and (z) Equity. The foregoing is illustrated by the following formula:

Net Sale Proceeds = Sale Proceeds -
(Debt + Current Debt Service + Sale Costs + Return + Equity)
Available Funds = 5% x Net Sale Proceeds.

(h) The Applicant shall hold and disburse all Available Funds in accordance with the terms of this Paragraph 33. Upon receipt of Available Funds, the Applicant shall make payment of all amounts then due (if any) pursuant to subparagraph (b) of this Paragraph 33 above. If the amount of Available Funds exceeds the amounts then due pursuant to subparagraph (b), Applicant shall notify the Authority of the amount of such excess of Available Funds (the "Available Funds Excess"). The Available Funds Excess shall bear interest at the Interest Rate which shall accrue for the period commencing on the date of such Available Funds Excess arises and ending on the earlier of (x) the date such Available Funds Excess are applied to the payment of any additional amounts which become due thereafter pursuant to subparagraph (b) as hereinafter provided or (y) the Available Funds Expiration Date. Thereafter, if and when, additional amounts become due pursuant

to subparagraph (b), Applicant shall pay such additional amounts from the Available Funds Excess. Upon the date (the "Available Funds Expiration Date") which is the closing date of the KBE Sale, Applicant shall pay such additional amounts (if any) as may be due pursuant to subparagraph (b) from the Available Funds (if any) realized from the KBE Sale and from the Available Funds Excess. Upon the payment of such additional amounts (if any) as may be due on the Available Funds Expiration Date, the Applicant shall be entitled to retain the balance of the Available Funds Excess for the benefit of Applicant, and thereafter, Applicant shall have no further payment obligations under this Paragraph 33. Notwithstanding anything in this Agreement to the contrary, no mortgagee of the Project nor any party claiming through any mortgagee of the Project shall have any obligation to make any payment pursuant to this Paragraph 33.

4. The Applicant's address set forth in Section 32 of the Cooperation Agreement shall be amended as follows:
Metropolitan/Columbia Plaza Venture, 125 Summer Street,
Boston, Massachusetts 02110, Attn: Mr. Robert L. Green.

5. In all other respect the Cooperation Agreement is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their behalf by their respective officers and joint ventures thereunto duly authorized as of the day and year first above set forth.

Approved as to form:

BOSTON REDEVELOPMENT AUTHORITY

Robert F. McNeil
Chief General Counsel
Boston Redevelopment
Authority

By _____
Stephen Coyle, Director

KINGSTON BEDFORD JOINT VENTURE,
a Massachusetts general partnership

By: METROPOLITAN STRUCTURES, an
Illinois general partnership

By: Metco Properties, and Illinois
limited partnership

By: _____
a General Partner

By: COLUMBIA PLAZA ASSOCIATES, a
Massachusetts general partnership

By: Ruggles-Bedford Associates,
Inc., a general partner

By: _____
Its _____

By: Chinese Investment Limited
Partnership, a general partner

By: Chinese Investment
Group, Inc., a general
partner

By: _____
Its _____

By: METROPOLITAN/COLUMBIA PLAZA
VENTURE, a Massachusetts general
partnership

By: Metropolitan Structures, and
Illinois general partnership

By: Metco Properties, and
Illinois limited
partnership

By: _____
a General Partner

By: Columbia Plaza Associates, a
Massachusetts general partnership

By: Ruggles-Bedford Associates,
Inc., a general partner

By: _____
Its _____

By: Chinese Investment Limited
Partnership, a general partner

By: Chinese Investment
Group, Inc. a general
partner

By: _____
Its _____

FIRST AMENDMENT TO DEVELOPMENT IMPACT PROJECT AGREEMENT
INCLUDING PROVISIONS FOR THE JOBS CONTRIBUTION GRANT
FOR
PLANNED DEVELOPMENT AREA NO. 35

ONE LINCOLN STREET

This AGREEMENT made as of the _____ day of _____, 1990
by and between the BOSTON REDEVELOPMENT AUTHORITY (hereinafter
"Authority"), a body politic and corporate created pursuant to
Chapter 121B of the Massachusetts General Laws and acting
hereunder pursuant to Chapter 652 of the Acts of 1960, as amended,
and Chapter 371 of the Acts of 1987, and KINGSTON BEDFORD JOINT
VENTURE ("KBJV"), a Massachusetts general partnership formed under
the laws of the Commonwealth of Massachusetts, consisting of
Metropolitan Structures, an Illinois general partnership, Columbia
Plaza Associates, a Massachusetts general partnership and
Metropolitan/Columbia Plaza Venture, a Massachusetts general
partnership, with an address c/o Metropolitan/Columbia Plaza
Venture, 200 State Street, Boston, Massachusetts 02109, its
successors and assigns (hereinafter "Applicant"); the Authority
and Applicant, collectively, shall be referred to herein as the
parties.

WHEREAS, the parties entered into a Development Impact
Project Agreement dated as of August 23, 1989 (the "DIP
Agreement");

WHEREAS, the parties hereto desire to amend the DIP Agreement
as hereinafter set forth (the "Amendment"); and

WHEREAS, all capitalized terms not otherwise defined in this Amendment shall have the meaning given to them in the DIP Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties agree to amend the DIP Agreement as follows:

1. The 30th line of Section 2.2 of the DIP Agreement shall be amended to add after the words "the Applicant." the following: If the Housing Payment Date does not occur within 24 months of the date of the Sale Agreement for any reason, the Advance Payment shall be repaid by the Authority to the Applicant within five days of Applicant's notice to the Authority together with interest calculated at the rate of $8\frac{1}{2}$ percent from (i) the date of delivery of the Advance Payment to the Authority to (ii) the date of repayment by the Authority of the Advance Payment. The obligation of the Authority to repay the Advance Payment as set forth in the immediately preceding sentence shall be secured by either (x) a mortgage on the City Land (as defined in the Sale Agreement), the amount and form of which mortgage shall be reasonably satisfactory to the Applicant or (y) another form of security, which security shall be reasonably satisfactory to the Applicant.

2. The Applicant's address set forth in Section 5.5 of the DIP Agreement shall be amended as follows: Metropolitan/Columbia Plaza Venture, 125 Summer Street, Boston, MA 02110, Attn: Mr. Robert L. Green.
3. In all other respects the DIP Agreement is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their behalf by their respective officers and joint venturers thereunto duly authorized as of the day and year first above set forth.

Approved as to form:

BOSTON REDEVELOPMENT AUTHORITY

Robert F. McNeil
Chief General Counsel of
Boston Redevelopment
Authority

By: Stephen Coyle, Director

KINGSTON BEDFORD JOINT VENTURE

By: _____

1/25/90

FIRST AMENDMENT TO
COOPERATION AGREEMENT
FOR

PLANNED DEVELOPMENT AREA NO. 34
RUGGLES CENTER

This AGREEMENT made as of the _____ day of _____ by and between the BOSTON REDEVELOPMENT AUTHORITY, a body politic and corporate created pursuant to Chapter 652 of the Acts of 1960, as amended, acting in its capacity as the planning board for the City of Boston (the "Authority") and RUGGLES CENTER JOINT VENTURE, a Massachusetts general partnership consisting of Metropolitan Structures, an Illinois general partnership, Columbia Plaza Associates, a Massachusetts partnership, and Metropolitan/Columbia Plaza Venture, a Massachusetts general partnership, its successors and assigns (the "Applicant"); the Authority and Applicant, collectively, shall be referred to herein as the parties.

WHEREAS, the parties entered into a Cooperation Agreement for Planned Development Area No. 34 dated September 11, 1989 (the "Cooperation Agreement");

WHEREAS, all capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in the Cooperation Agreement; and

WHEREAS, the parties hereto desire to amend the Cooperation Agreement as hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties agree to amend the Cooperation Agreement as follows:

1. The last seven lines of subparagraph (a)(i) of Paragraph 14 of the Cooperation Agreement commencing with "or (z) the date of closing" and ending with "Construction Agreement")." are deleted and substituted with the following:

"or (z) the date of closing of the Phase Sale. For purposes of this Agreement, "Phase Sale" shall mean with respect to each Phase of the Project any transfer, by the Applicant by deed or otherwise, except as set forth hereinafter, of more than fifty percent (50%) of the Applicant's legal or beneficial ownership interest in the Phase provided that the granting of any mortgage by the Applicant in connection with any financing of the Phase shall not constitute a Phase Sale, nor shall any transfer by the Applicant to any mortgagee of the Phase or those claiming through any mortgagee (whether by foreclosure or deed-in-lieu thereof) constitute a "Phase Sale"."

2. The Applicant's address set forth in Section 33 of the Cooperation Agreement shall be amended as follows: Metropolitan/ Columbia Plaza Venture, 125 Summer Street, Boston, MA 02110, Attn: Mr. Robert L. Green.

3. In all other respects the Cooperation Agreement is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their behalf by their respective officers and joint ventures thereunto duly authorized as of the day and year first above set forth.

Approved as to Form: BOSTON REDEVELOPMENT AUTHORITY

Robert F. McNeil
Chief General Council
Boston Redevelopment
Authority

By: _____
Stephen Coyle, Director

RUGGLES CENTER JOINT VENTURE,
a Massachusetts general partnership

By: METROPOLITAN STRUCTURES, an
Illinois general partnership

By: Metco Properties, an
Illinois limited
partnership

By: _____
a General Partner

By: COLUMBIA PLAZA ASSOCIATES, a
Massachusetts general
partnership

By: Ruggles-Bedford
Associates, Inc., a
general partner

By: _____
Its _____

By: Chinese Investment Limited Partnership, a general partner

By: Chinese Investment Group, Inc., a general partner

By: _____
Its _____

By: METROPOLITAN/COLUMBIA PLAZA VENTURE, a Massachusetts general partnership

By: Metropolitan Structures, an Illinois general partnership

By: Metco Properties, an Illinois limited partnership

By: _____
a General Partner

By: Columbia Plaza Associates, a Massachusetts general partnership

By: Ruggles-Bedford Associates, Inc., a general partner

By: _____
Its _____

By: Chinese Investment Limited Partnership, a general partner

By: Chinese Investment Group, Inc. a general partner

By: _____
Its _____

MEMORANDUM

FEBRUARY 8, 1990

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: PAMELA WESSLING, ASSISTANT DIRECTOR FOR
URBAN DESIGN AND DEVELOPMENT
MUHAMMAD ABDUS-SABUR, DEPUTY DIRECTOR
MICHAEL HUNTER, DEPUTY DIRECTOR
JUAN CARLOS LOVELUCK, PROJECT MANAGER
ANDREA d'AMATO, PROGRAM DEVELOPMENT OFFICER

RE: RECOMMENDATION TO THE CITY OF BOSTON AND THE
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY OF FINAL
DESIGNATION OF METROPOLITAN/COLUMBIA PLAZA VENTURE AS
DEVELOPER OF THE ONE LINCOLN STREET AND RUGGLES CENTER
SITES

SUMMARY: SINCE THE TENTATIVE DESIGNATION OF COLUMBIA PLAZA ASSOCIATES AND METROPOLITAN STRUCTURES VOTED BY THE BRA ON MARCH 10, 1988, THE DEVELOPERS HAVE WORKED COOPERATIVELY WITH THE BRA, THE CITY, THE MBTA, AND THE COMMUNITY TO COMPLY WITH THE TERMS OF THE TENTATIVE DESIGNATION, THE CHALLENGE TRACK PROCESS, AND THE GOALS OF THE PARCEL TO PARCEL LINKAGE PROGRAM. IN ORDER TO PROCEED WITH THE PARCEL TO PARCEL LINKAGE I PROJECT, THE BRA MUST: GRANT FINAL DESIGNATION TO MCPV, THROUGH ITS AFFILIATES KBJV AND RCJV, AUTHORIZE ISSUANCE OF THE ADEQUACY DETERMINATION FOR ONE LINCOLN STREET PURSUANT TO DEVELOPMENT REVIEW REQUIREMENTS, AND MUST EXECUTE THOSE DOCUMENTS NECESSARY FOR THE TRANSFER OF THE SITES TO THE DEVELOPER. THESE DOCUMENTS INCLUDE THE FOLLOWING: SALE AND CONSTRUCTION AGREEMENTS WITH THE DEVELOPER WITH REGARD TO THE ONE LINCOLN STREET AND RUGGLES CENTER SITES, A PURCHASE AND SALE AGREEMENT WITH THE MBTA WITH REGARD TO THE DISPOSITION OF THE RUGGLES CENTER SITE, AND FIRST AMENDMENTS TO THE COOPERATION AND DEVELOPMENT IMPACT PROJECT AGREEMENTS WITH RESPECT TO ONE LINCOLN STREET, AND FIRST AMENDMENT TO THE COOPERATION AGREEMENT WITH RESPECT TO RUGGLES CENTER.

PARCEL TO PARCEL LINKAGE

The concept of parcel to parcel linkage is to capitalize on the disposition of publicly-owned sites. The development of strategically located sites which the market would otherwise ignore is stimulated by linking them with significant market-driven development opportunities available on other publicly-controlled sites. The BRA and the City have linked Parcel 18 in Roxbury with the Kingston-Bedford garage site downtown as the

first Parcel to Parcel Linkage Project. The development of Parcel 18 as Ruggles Center and the Kingston-Bedford site as One Lincoln Street will provide a comprehensive package of public benefits to the Roxbury and Chinatown communities, and Ruggles Center will serve as a catalyst for further economic development in the Dudley Square area. The development of Ruggles Center is the first step in rebuilding the neighborhood's economy and bringing opportunities to the minority communities of Boston which are long overdue.

FINAL DESIGNATION

Overview

On March 10, 1988, the Boston Redevelopment Authority (BRA) voted to recommend to City agencies and to the Massachusetts Bay Transportation Authority (MBTA) the tentative designation of a joint venture between Columbia Plaza Associates (CPA) and Metropolitan Structures as developer of the One Lincoln Street and Ruggles Center sites. This recommendation was accepted by the Real Property Board on April 21, 1988, the Public Facilities Commission on April 28, 1988, and the MBTA on May 25, 1988.

The tentative designation was a milestone in the Parcel to Parcel Linkage I Project in that it completed the initial phases of defining the goals of the Parcel to Parcel Linkage program and of selecting qualified community and national development teams best suited to carrying out the project.

Since tentative designation, Metropolitan/Columbia Plaza Venture (MCPV) has complied with all the terms of its tentative designation as described below. In light of the progress which has been made by MCPV, the public agencies involved, and the Roxbury and Chinatown communities in their review of the projects and the associated public benefits, the granting of final designation to MCPV is now appropriate.

Partnership Agreements

Since tentative designation, CPA and Metropolitan Structures formed a development entity whose structure responds to the Challenge Track criterion of expanding the participation of community-based organizations in the Parcel to Parcel Linkage Project. MCPV is a Massachusetts general partnership between CPA and Metropolitan Structures. Each entity has a 50% interest in the Venture. This degree of ownership by the community-based developer exceeds the Challenge Track requirements and demonstrates MCPV's commitment to the Parcel to Parcel Linkage I Project.

For financing and legal reasons, the team created similar entities to develop and own each project: Ruggles Center Joint Venture (RCJV) and Kingston Bedford Joint Venture (KBJV). Both of these partnerships are owned as follows: MCPV, 99.9%;

CPA, .05%; and Metropolitan Structures, .05%. All three partnership agreements are on file at the BRA.

Community Equity Requirement

The Challenge Track criteria includes the introduction of community equity participation within CPA. The Chinese Investment Limited Partnership (CILP), a general partner of CPA, complied with this 10% requirement by including the Consolidated Chinese Benevolent Association (CCBA) as a Class C limited partner. As such, CCBA is entitled to receive 10% of all cash distributions to CILP after the repayment of the CILP investor capital. Ruggles Bedford Associates (RBA), the other general partner of CPA, will comply with the community equity requirement in the same manner as CILP has. RBA intends to make stock representing 10% ownership of RBA available, for nominal considerations, to various community-based organizations in Roxbury. RBA intends to select these community partners through a selection process whereby interested community groups are evaluated based on pre-established selection criteria. The Board will be informed on February 22 of RBA's selection.

Community Benefits

The community benefits provided by MCPV with respect to the development of One Lincoln Street and Ruggles Center are described in the September 11, 1989 Memorandum of Understanding (MOU) regarding community benefits (a copy of which is on file at with the BRA). The MOU specifies the community benefits envisioned through the Challenge Track process and in discussions with the Roxbury and Chinatown communities. To ensure the delivery of these benefits to the Roxbury and Chinatown communities, the provision of each benefit has been implemented in one or more of the following documents, as amended from time to time: One Lincoln Street DIP Agreement, One Lincoln Street Cooperation Agreement, Ruggles Center DIP Agreement, and Ruggles Center Cooperation Agreement.

The principal public benefits associated with the Parcel to Parcel Linkage I Project include, among others, a Community Development Fund (CDF), Housing Creation for each community through linkage payments, Jobs Creation Grant from linkage, expansion of employment opportunities for both construction and permanent jobs, child care for at least 100 children in each community, a 30% goal for MBE contracting and retail space occupancy, and a total of \$500,000 in Challenge Grants for the expanding minority capacity in the real estate industry.

In addition, up to \$3.15 million will be distributed out of 5 percent of the net residual proceeds of the One Lincoln Street project, as follows: up to \$1 million to the Neighborhood Parking Fund administered by the Real Property Department; up to \$500,000 toward the construction of a park if Essex Street is widened, up to \$650,000 to the City to defray cost of land acquisition if

Essex Street is widened, and up to \$1 million to the CDF.

It is anticipated that the housing linkage money dedicated to Chinatown will be used for the benefit of the Chinatown Housing Initiative Program (CHIP) on Parcels A, B and C. In Roxbury, linkage funds may be used for a variety of projects, including Parcel 22, a homebuyer assistance program, and/or other projects which may require financial assistance such as Fountain Hill, St. James Estates, Douglas Plaza, or the CAB project.

One of the key privately-initiated public benefits of the Parcel to Parcel Linkage I Project is the creation of the CDF, which will serve as the recipient of CDF funds and will distribute the CDF funds for the benefit of the Roxbury and Chinatown communities. Since tentative designation, it has been determined by the Mayor's Office that the CDF will be established as a trust. The Board of Trustees will include representatives from Roxbury and Chinatown. This Board will be responsible for the formation and operation of the CDF. CDF funds from One Lincoln will be distributed 1/3 to Chinatown, 1/3 to Roxbury, and 1/3 city-wide. CDF funds from Ruggles Center will be divided evenly between the Roxbury and Chinatown communities. Approximately \$10 million to \$13 million will be generated for the CDF.

MCPV and the communities have made considerable progress in developing other community benefits. For example, the first round of Jobs Creation Request for Proposals (RFP) has been drafted for each community. The Housing Creation Proposals are currently being drafted for the first round of linkage payments. The housing funds are targeted for Parcels A, B, and C in Chinatown and Parcel 22 in Roxbury. Also, MCPV has prepared a child care needs assessment study for each community and is presently formulating an operation plan for the child care facilities.

Marketing

MCPV is aggressively marketing both projects to prospective tenants. In its initial efforts, MCPV expended substantial resources in the effort to secure the MWRA as the lead tenant in Ruggles Center. While those efforts were unsuccessful, current tenant prospects include various State agencies, as well as one or more institutions of the Longwood Medical Area. For One Lincoln, MCPV has held discussions with several potential lead tenants.

Development Plans

MCPV has worked cooperatively with the BRA, the MBTA, and the Roxbury and Chinatown communities to produce development plans for the One Lincoln Street and Ruggles Center projects. These plans describe appropriately scaled projects responsive to the goals of the Parcel to Parcel Linkage program. Specifically, on June 29, 1989, the BRA approved the PDA/DIP Plan

for One Lincoln Street and the Master PDA/DIP Plan for Ruggles Center and Development Plan for the first phase of Ruggles Center. The Zoning Commission approved all of these plans on August 11, 1989.

Schematic design approval for the One Lincoln Street was granted on June 29, 1989, and for Ruggles Center on December 11, 1989. MCPV submitted design development documents for both Phase I of Ruggles Center and One Lincoln Street on January 23, 1990. Design Development approval was granted on January 29, 1990 for One Lincoln Street and on February 2, 1990 for Ruggles Center (exclusive of the garage).

ENVIRONMENTAL REVIEW

The environmental review for the projects is complete. The BRA prepared and submitted to Executive Office of Environmental Affairs (EOEA) the Draft Environmental Impact Reports (DEIRs) for One Lincoln Street and Ruggles Center in early 1988. The scoping requirements and the DEIRs were reviewed with the Roxbury and Chinatown communities at that time. The Secretary of EOEA issued a Certificate of Adequacy on the One Lincoln Street DEIR on June 6, 1989, and on the Ruggles Center DEIR on May 22, 1989. A Certificate of Adequacy on the FEIR for One Lincoln Street was issued on January 19, 1990, and on the Ruggles Center FEIR on December 18, 1989.

In addition, the One Lincoln Street project has been reviewed by the BRA pursuant to Article 31. The FEIR served as the Final Project Impact Report (FPIR) for the purposes of Article 31 review. The BRA issued its Preliminary Adequacy Determination on August 30, 1989. The FPIR/FEIR has been reviewed by the BRA staff and it demonstrates that the project adequately mitigates its environmental impacts. Therefore we recommend that the Director be authorized to issue an Adequacy Determination for the One Lincoln Street project.

SALE AND CONSTRUCTION AND OTHER AGREEMENTS

The Sale and Construction Agreement for One Lincoln Street calls for a total consideration to the City, including the conveyance of easements and discontinued portions of abutting streets, of \$15 million. KBJV will undertake any hazardous waste cleanup and site clearance required. Closing is scheduled to occur on or before June of this year.

The Purchase and Sale Agreement between the BRA and the MBTA calls for the sale of the property to the BRA for a consideration of \$10 per square foot, except for the public plaza, which will be sold to the BRA for a nominal amount. The Sale and Construction Agreement for Ruggles Center calls for the property to be sold by the BRA to RCJV at a cost of \$10 per square foot. The public plaza, which is the focal point of the Ruggles Center project, will remain in public ownership. The MBTA will be

responsible for hazardous waste clean-up on the Public Plaza subject to certain limitations set forth in the Purchase and Sale Agreement. The City has authorized and appropriated \$2.1 million for the design and construction of the public plaza. Land will be transferred in phases from the MBTA to the BRA, and then from the BRA to the developer, as the developer is prepared to begin construction of a particular phase. Construction is expected to begin on both sites this summer.

RECOMMENDATION

The development of the One Lincoln Street and Ruggles Center projects will provide unprecedented benefits to the communities in which they are located, including equity opportunities for community residents and organizations, affordable housing, jobs and job training, child care, and funds for community development. The development of Ruggles Center will also afford MBEs an opportunity to provide goods and services related to the construction and operation of the project, and will offer below-market rate space to neighborhood businesses.

In consideration of the progress since tentative designation on the community benefits enumerated above, and because of MCPV's diligence in meeting the terms of tentative designation, we recommend that the BRA grant MCPV final designation as the developer of the Parcel to Parcel Linkage I Project, grant final designation to KBJV as developer of One Lincoln Street, grant final designation of RCJV as developer of Ruggles Center, and that the BRA recommend these final designations to the Real Property Board and the Public Facilities Commission for the One Lincoln Street project and final designation to the MBTA for Ruggles Center. We also recommend that the Director be authorized to issue the Adequacy Determination for One Lincoln Street pursuant to Development Review Requirements. Finally, we recommend that the Director be authorized to enter into the following documents necessary to convey the One Lincoln Street and Ruggles Center sites: Sale and Construction Agreements with the developer for One Lincoln Street and Ruggles Center, Purchase and Sale Agreement with the MBTA for Ruggles Center, First Amendments to the DIP and Cooperation Agreements for One Lincoln Street, and First Amendment to the Cooperation Agreement for Ruggles Center.

Appropriate votes follow:

VOTED: That the BRA hereby grants final designation to Metropolitan/Columbia Plaza Venture as the developer of the Parcel to Parcel Linkage I Project, to Kingston Bedford Joint Venture as developer of One Lincoln Street, to Ruggles Center Joint Venture as developer of Ruggles Center, and that the BRA hereby recommends said final designations, with respect to One Lincoln Street,

to the Real Property Board and the Public Facilities Commission, and with respect to Ruggles Center to the MBTA Board.

VOTED: That the Director be and hereby is authorized to issue the Adequacy Determination for One Lincoln Street in accordance with Article 31 of the Boston Zoning Code.

VOTED: That the Director be and hereby is authorized to execute the following documents, in substantially the same form as appended hereto, with such modifications as the BRA Director in his discretion deems necessary and appropriate, and any other documents that the Director in his discretion deems necessary and appropriate in order to effectuate the transfer of the One Lincoln Street site from the City to KBJV and the development thereof and the transfer of the Ruggles Center site from the MBTA to the BRA and from the BRA to RCJV and the development thereof:

1. Sale and Construction Agreement for the One Lincoln Street site.
2. Purchase and Sale Agreement with the MBTA for Parcel 18.
3. Sale and Construction Agreement for Parcel 18.
4. First Amendment to the Cooperation Agreement for One Lincoln Street.
5. First Amendment to the DIP Agreement for One Lincoln Street.
6. First Amendment to the Cooperation Agreement for Ruggles Center.